

# **EXHIBIT 4**

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 County of Santa Clara  
 17CV315499  
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**SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SANTA CLARA**

Adam Gurno, individually and on behalf  
 of all others similarly situated,

Plaintiff,

v.

Google, Inc., a Delaware Corporation, and  
 Google Payment Corporation, a Delaware  
 Corporation, and DOE 1 through DOE 20  
 Inclusive

Defendants.

Case No. **17CV315499**

CLASS ACTION

COMPLAINT FOR BREACH OF  
 CONTRACT, BREACH OF  
 COVENANT OF GOOD FAITH  
 AND FAIR DEALING, AND  
 VIOLATIONS OF CAL. BUS  
 PROF. CODE § 17200

DEMAND FOR JURY TRIAL

**Class Action Complaint**

Plaintiff Adam Gurno, on behalf of himself and all others similarly situated, by and through his counsel, based upon personal knowledge as to facts known to Plaintiff, and upon information and belief following investigation of counsel as to other facts, alleges as follows against Defendants Google, Inc. ("Google") and Google Payment Corporation ("GPC") (collectively, "Defendants").

**Introduction**

1. This class action seeks relief arising from electronic communications and contracts made by Buyers using Defendants' Google Play store and Google Wallet service.

1 2. Plaintiff and other consumers are software purchasers (“Buyers”).

2 3. Each time a Buyer purchased a mobile device software application (“App”) sold from  
3 Defendants’ online Google Play store, the Buyer was required to enter, and did enter, into a new  
4 and separate agreement (“Buyer Contract”) constituted of the set of Google Wallet Terms of  
5 Service (“GWToS”) then-applicable to an App purchase. *Inter alia*, each Buyer Contract  
6 required the Buyer to use Defendants’ Google Wallet online payment service for the purchase, to  
7 accept Google Wallet’s then-existing terms, and to pay money to Defendants to purchase the  
8 App.

9 4. All Buyer Contract provisions were created solely by, or on behalf of, Defendants.

10 5. Defendants created, structured, and programmed the system through which Buyers  
11 obtained Apps through Buyer Contracts.

12 6. Defendants collected the money Buyers paid pursuant to Buyer Contracts.

13 7. Defendants retained thirty percent (30%) of the amount Buyers paid pursuant to each  
14 Buyer Contract to purchase an App; Defendants credit the rest, seventy percent (70%), to the  
15 associated App Vendor.

16 8. Buyers executed each “Buyer Contract” by providing information for, and triggering the  
17 assembly of, data “packets”<sup>1</sup> that electronically communicated information to the Defendants.

18 9. The packets included both: (i) electronic-addressing information that enabled  
19 communications concerning the App purchase to be routed to the Defendants; and (ii) personal  
20 identifying information (“PII”) about the Buyers, including, for example, credit card information,  
21 addresses, zip codes, names, phone numbers, email addresses.

22 10. Defendants did not need to share PII with App Vendors.

23  
24  
25 <sup>1</sup> “For example, in its entirety, *Newton's Telecom Dictionary* defines ‘packet’ as ‘a bundle of data,  
26 usually in binary form, organized in a specific way for transmission. Three principal elements are  
27 included in the packet: 1. *Control information – destination, origin*, length of packet, etc., 2. the  
28 data to be transmitted and 3. Error detection and correction bits.’ Papyrus Tech. Corp. v. NYSE,  
581 F. Supp. 2d 502, 530 (S.D.N.Y. 2008), *quoting*, *Newton's Telecom Dictionary's* definition of  
“packets.”

11. Defendants nevertheless shared with App Vendors elements of PII that included one or more of the following: identity (name), street address, city, zip code, email address, or telephone number.

12. Defendants have ceased the practice of sharing elements of PII with App Vendors.

13. Each Buyer Contract included terms precluding Defendants from sharing PII with the related App Vendor except as necessary, or as set forth in specific exceptions in the related Buyer Contract.

14. The relevant nondisclosure promises about PII become applicable to Buyers through Buyer Contracts; they do not apply when Google Play users obtain Free Apps offered on Google Play.

15. The disclosures at issue did not occur when Google Play users downloaded Free Apps through Google Play.

16. By unnecessarily disclosing Buyers' PII, Defendants:

- i. Violated the California Unfair Competition Law's ("UCL") prohibition against "unfair" conduct. Cal. Bus. & Prof. Code § 17200, *et seq.*;
- ii. Violated the Google Wallet Terms of Service ("GWToS"), breaching the contract written by or for the Defendants themselves;
- iii. Violated Cal. Bus. & Prof. Code § 22576 and contravened the public policy tethered to California's constitutional right of privacy, Const. Article I, Section 1;
- iv. Violated the covenant of good faith and fair dealing accompanying the Buyer Contracts;
- v. Contravened the policy underlying the California Attorney General's Joint Statement of Principles to which Google and other major App marketers (including, e.g., Apple and Microsoft) agreed on or about February 22, 2012;
- vi. Contravenes the policy outlined in the Consumer Privacy Bill of Rights, introduced by the White House in February of 2012.

1 17. By unnecessarily disclosing Buyers' PII, Defendants breached the terms of the Buyer  
2 Contract the Defendants required Buyers to enter each time a Buyer purchased an App through  
3 Google Play.

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8 **Parties**

9 18. Plaintiff Adam Gurno is an individual and a citizen of the State of Minnesota.

10 19. Google is a Delaware corporation with its principal place of business in Mountain View,  
11 California.

12 20. GPC is a Delaware corporation and wholly-owned subsidiary of Google that shares its  
13 principal place of business with Google, 1600 Amphitheatre Parkway, Mountain View, CA  
14 94043. Some of Google's officers have taken positions with GPC: for example, Kent Walker,  
15 Google's Senior Vice President & General Counsel, assumed the position of a GPC Director;  
16 Lloyd Martin, Financing and Accounting Director at Google, took a position as GPC Director and  
17 Treasurer; and Google Engineering Director, Marcus Mitchell, took a position as GPC CEO and  
18 Director.

19 21. Defendants acted as aiders, abettors and co-conspirators of the other Defendants, or are  
20 obligated by law to be financially responsible for such conduct. In engaging in the conduct  
21 alleged herein, each Defendant acted individually and as the agent, employee, representative,  
22 partner, or joint venturer of the other Defendants in the commission of the acts alleged herein, and  
23 acted within the course and scope of its duty as such agent, employee, representative, partner or  
24 joint venturer. The acts of each Defendant were authorized or ratified by each other Defendant,  
25 and together constitute a single and continuing course of conduct.

26 **Jurisdiction and Venue**

27 22. The Court has jurisdiction over this action pursuant to the California Constitution, Article  
28 VI, Section 10 and Cal. Code Civ. Proc. § 410.10. Defendants' principal places of business are in

1 California.

2 **23.** Venue is proper in the County of Santa Clara because Defendants' principal places of  
3 business are in Santa Clara.

4 **24.** The choice-of-law provision in the relevant contract calls for application of California  
5 law.

## 6 **Factual Allegations**

### 7 ***Buying Apps Through Google Play***

8 **25.** Google Play is the Defendants' digital multimedia and App content distribution platform  
9 that is accessible via internet-capable computing equipment and mobile devices.

10 **26.** Google Play offers Apps for which no payment is required ("Free Apps") and Apps for  
11 which payment is required ("Paid Apps").

12 **27.** To purchase any Paid App through Google Play, a person must have a Google Wallet  
13 account.

14 **28.** One or more of the Defendants drafted the GWToS. (Ex. A)

15 **29.** The GWToS indicate they are a "legal agreement" governing "access to and use of  
16 Google Wallet."

17 **30.** Both Defendants are parties to the GWToS.

18 **31.** The GWToS indicate "GPC's or Google's policies" govern "Services" identified in the  
19 GWToS.

20 **32.** The GWToS establish rights and requirements for a Buyer (i.e., someone who purchases a  
21 Paid App through Google Play) distinct from those applicable to a "Customer" (i.e., someone  
22 who has registered for Google Wallet but has not used it to make a purchase).

23 **33.** GWToS require Buyers to pay "obligations," "charges," and "fees." (Ex. A, § 3.1)

24 **34.** The Defendants require only Buyers, and not people who obtain Free Apps offered on  
25 Google Play, to enter into and "complete" a new and separate contract each time a Buyer  
26 purchases a Paid App through Google Play.

1 35. Under the GWToS, a Buyer Contract is not “complete” until a person wanting to make a  
2 purchase clicks a button that: (i) indicates consent to the GWToS existing at the time of the  
3 purchase; and (ii) authorizes Defendants to execute the transaction.

4 36. A Buyer Contract, once completed, makes available Defendants’ “Services” which are  
5 otherwise not available including, without limitation, payment processing and non-disclosure  
6 obligations. (Ex. A at 3)

7 37. Completing a Buyer Contract triggers the assembly of packets of digital data (“Packets”)  
8 which are transmitted to Defendants.

9 38. Packets incorporate electronic-addressing information enabling them to be routed to the  
10 Defendants.

11 39. Packets also include the information that Buyers intend to communicate to Defendants for  
12 the purpose of purchasing an App: namely, the authorization to post a charge to the Buyer’s  
13 “Payment Instrument” (e.g., a credit card or other account), confirming that the Buyer has  
14 accepted the then-applicable GWToS, and PII.

15 40. After the Buyer purchases a Paid App under a Buyer Contract, one or more of the  
16 Defendants post a charge to the Buyer’s Payment Instrument.

17 41. The Buyer’s Payment Instrument reflects payment to one of the Defendants for each  
18 Buyer Contract.

19 42. Defendants directly receive all the money charged to the Buyer’s Payment Instrument.

20 43. The GWToS direct Buyers who want information about their “purchase” to “review” the  
21 “periodic statement” associated with the Buyer’s Payment Instrument. (Ex. A, § 3.10)

22 44. The Buyer’s Payment Instrument makes no payment to App Vendors.

23 45. After a Buyer purchases an App in the above fashion, one of the Defendants pays the App  
24 Vendor 70% of the App’s price, or credits an App Vendor’s Google Account with that  
25 percentage, retaining the rest.

26 46. The GWToS assert that Defendants will collect no fee from the Buyer in connection with  
27 an App purchase.  
28



1 47. To the degree Defendants' fees may be putatively "charged" to the App Vendor, such fees  
2 are not disclosed in the GWToS.

3 48. The GWToS recognize that Defendants may become liable for damages to Buyers.

4 49. The GWToS indicate that the damages Defendants may have to pay to Buyers are linked  
5 to, and limited to, "net fees GPC has actually received and retained." (Ex. A, § 15)

6 ***Defendants' Privacy Obligations***

7 50. PII within Packets transmitted under a Buyer's Contract is subject to Defendants' privacy  
8 policies, its general privacy promises, and its descriptive explanations articulating what  
9 Defendants' privacy promises mean. (Ex. B at 2; Ex. C at 3-4)

10 51. The Google Wallet Privacy Policy, incorporated by reference into Buyer Contracts by the  
11 GWToS, states that it "describes our privacy practices that are specific to Google Wallet" and that  
12 Defendants "will not share your personal information with anyone outside of GPC or its affiliates  
13 except as described in this Privacy Notice."

14 52. The Google Wallet Privacy Policy grants permission for Defendants to share a Buyer's  
15 personal information with other companies or individuals outside of Google only: (i) as permitted  
16 under the Google Privacy Policy; (ii) as necessary to process the Buyer's transaction and maintain  
17 the Buyer's account; or (iii) to complete the Buyer's registration for a service provided by a third  
18 party. (Ex. B at 2)

19 53. The Google Privacy Policy, incorporated by reference into Buyer Contracts by the Google  
20 Wallet Privacy Policy, only grants Defendants authorization to share personal information with  
21 third parties in defined circumstances, such as with the Buyer's consent, with domain  
22 administrators, for external processing, and for legal reasons. (Ex. C at 3-4)

23 ***Defendants' Unnecessary Disclosure of PII***

24 54. App Vendors who offer Apps through Google Play must have a Google Wallet (formerly  
25 "Google Checkout") account.

26 55. When Defendants have charged the sales price for a Paid App to a Buyer's Payment  
27 Instrument, Defendants disclose the Buyer's PII to the App Vendor by transmitting it to the App  
28 Vendor's Google Wallet account.



1 56. PII transmitted to the App Vendor's Google Wallet account includes the Buyer's email  
2 address and zip code and may include Buyer's name, address, city, and telephone number.

3 57. Defendants' disclosure of PII to App Vendors is not authorized by the related Buyer  
4 Contracts.

5 58. Defendants' post-transaction disclosure of PII to App Vendors is not necessary,  
6 retroactively or otherwise, to process the transaction or to maintain Buyers' account.

7 59. Defendants do not need to transfer Buyers' PII to App Vendors for external processing,  
8 for legal reasons, for purposes of investigating potential violations of GWToS, to detect, prevent,  
9 or otherwise address fraud, security or technical issues, to protect against harm to the rights,  
10 property or safety of Google, Google users, or the public.

11 60. App Vendors do not need Buyers' PII to use Google Wallet's payment-processing  
12 services or for account maintenance.

13 61. Processing App purchases through Google Wallet does not require Defendants to register  
14 Buyers for third-party services.

15 62. Google's competitor Microsoft provides a service nearly identical to Google Play and  
16 Google Wallet - the Windows Phone Store - which features many of the same App Vendors who  
17 provide their Apps for sale on Google Play. Like Defendants, Microsoft retains a portion of the  
18 sale price for each App purchase transacted through its Windows Phone Store but, in contrast to  
19 Defendants' practice, Microsoft does not disclose PII to App Vendors as part of that transaction.

20 63. App Vendors expressed uncertainty about why they were receiving PII in connection with  
21 App purchases, and some have specifically disclaimed the need for it.<sup>2</sup>

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22  
23 *See, e.g.,* Jessica Guynn, *Google Under Fire for Sending Users' Information to Developers*, L.A.  
24 Times, Jan. 14, 2013, *available at* [http://articles.latimes.com/2013/feb/14/business/la-fi-tn-](http://articles.latimes.com/2013/feb/14/business/la-fi-tn-google-under-fire-for-sending-users-information-to-developers-20130213)  
25 *google-under-fire-for-sending-users-information-to-developers-20130213* (last visited Aug. 8,  
26 2017); Charles Arthur, *Google Raises Privacy Fears as Personal Details Are Released to App*  
27 *Vendors*, The Guardian, Feb. 25, 2013, *available at* [www.guardian.co.uk/technology/2013](http://www.guardian.co.uk/technology/2013/feb/25/google-privacy-fears-app-developers)  
28 */feb/25/google-privacy-fears-app-developers* (last visited Aug. 8, 2017).; Chris Tomassucci,  
*Google Play(ing) With Your Personal Info*, The Daily News, Feb. 17, 2013, *available at*  
[https://web.archive.org/web/20130910150253/http://www.ironmountaindailynews.com/page/blog-](https://web.archive.org/web/20130910150253/http://www.ironmountaindailynews.com/page/blog-s.detail/display/1309/Google-Play-ing-with-your-personal-info-.html)  
*s.detail/display/1309/Google-Play-ing-with-your-personal-info-.html* (last visited Aug. 8, 2017).

1 64. Defendants did not tell Buyers that their PII was being needlessly disclosed to App  
2 Vendors.

3 *Plaintiff's Experience*

4 65. Plaintiff originally signed up and registered for Google's "Checkout" payment processing  
5 service, providing to Defendants certain PII, including his personal and credit card information  
6 (e.g., credit card numbers, name, address, zip code, email address, and telephone number), and  
7 agreeing to the then-current Checkout terms of service.

8 66. In November 2011, Defendants replaced their Checkout payment processing service with  
9 Google Wallet.

10 67. On May 1, 2012, Plaintiff selected from the Google Play library the "Tasker" App  
11 published by third-party Crafty Apps.

12 68. Plaintiff then purchased the Tasker App for \$6.49 through a Buyer Contract by sending  
13 Defendants his purchase authorization information, agreeing to the then-current GWToS, and, for  
14 the first time in connection with a purchase, confirming and authorizing use, in the Buyer  
15 Contract, of some information he had stored with the Defendants by clicking the button  
16 authorizing the purchase.

17 69. Upon receipt of Plaintiff's purchase authorization information, Defendants debited  
18 Plaintiff's Payment Instrument, collected the \$6.49 sales price, retained 30% (\$1.95), and made  
19 Plaintiff's PII - including his name, email address, and zip code - available to App Vendor Crafty  
20 Apps.

21 70. On May 19, 2012, Plaintiff selected from the Google Play library the "Drop7" App  
22 published by third-party Zynga Inc.

23 71. Plaintiff thereafter purchased the Drop7 App for \$2.99 through a Buyer Contract by  
24 sending Defendants his purchase authorization information, confirming and authorizing use, in  
25 the Buyer Contract, of some information he had stored with the Defendants and agreeing to the  
26 then-current GWToS by clicking the software button authorizing the purchase.

72. Upon receipt of Plaintiff's purchase authorization information, Defendants debited Plaintiff's Payment Instrument, collected the \$2.99 sales price, retained 30% (\$0.90), and made Plaintiff's PII - including his name, email, and zip code - available to App Vendor Zynga Inc.

73. On August 17, 2012, Plaintiff selected from the Google Play library the "n7player Full Version Unlocker" App published by third-party N7 Mobile S.p. z.o.o.

74. Plaintiff thereafter purchased the n7player Full Version Unlocker App for \$2.99 through a Buyer Contract by sending Defendants his purchase authorization information, confirming and authorizing use, in the Buyer Contract, of some information he had stored with the Defendants and agreeing to the then-current GWToS in tandem with clicking the software button authorizing the purchase.

75. Upon receipt of Plaintiff's purchase authorization information, Defendants debited Plaintiff's Payment Instrument, collected the \$2.99 sales price, retained 30% (\$0.90), and made Plaintiff's PII - including his name, email, and zip code - available to App Vendor N7 Mobile S.p. z.o.o.

76. On September 25, 2012, Plaintiff selected from the Google Play library the "re:Stacks" App published by third-party Nice Distractions.

77. Plaintiff thereafter purchased the re:Stacks App for \$1.99 through a Buyer Contract by sending Defendants his purchase authorization information, confirming and authorizing use, in the Buyer Contract, of some information he had stored with the Defendants and agreeing to the then-current GWToS in tandem with clicking the software button authorizing the purchase.

78. Upon receipt of Plaintiff's purchase authorization information, Defendants debited Plaintiff's Payment Instrument, collected the \$1.99 sales price, retained 30% (\$0.60), and made Plaintiff's PII - including his name, email, and zip code - available to App Vendor Nice Distractions.

79. On December 13, 2012, Plaintiff selected from the Google Play library the "motiongraph" App published by third-party Sony Digital Network Applications, Inc.

80. Plaintiff thereafter purchased the motiongraph App for \$0.99 through a Buyer Contract by sending Defendants his purchase authorization information, confirming and authorizing use, in

1 the Buyer Contract, of some information he had stored with the Defendants and agreeing to the  
2 then-current GWToS in tandem with clicking the software button authorizing the purchase. (*See*  
3 Exs. A, B, C.)

4 **81.** Upon receipt of Plaintiff's purchase authorization information, Defendants debited  
5 Plaintiff's Payment Instrument, collected the \$0.99 sales price, retained 30% (\$0.30), and made  
6 Plaintiff's PII - including his name, email, and zip code - available to App Vendor Sony Digital  
7 Network Applications, Inc.

8 **82.** On August 29, 2013, Plaintiff selected from the Google Play library the "Gem Miner 2"  
9 App published by third-party Psym Mobile.

10 **83.** Plaintiff thereafter purchased the Gem Miner 2 App for \$1.99 through a Buyer Contract  
11 by sending Defendants his purchase authorization information, confirming and authorizing use, in  
12 the Buyer Contract, of some information he had stored with the Defendants and agreeing to the  
13 then-current GWToS in tandem with clicking the software button authorizing the purchase. (*See*  
14 Exs. B, J, K.)

15 **84.** Upon receipt of Plaintiff's purchase authorization information, Defendants debited  
16 Plaintiff's Payment Instrument, collected the \$1.99 sales price, retained 30% (\$0.60), and made  
17 Plaintiff's PII - including his name, email, and zip code - available to App Vendor Psym Mobile.

18 **85.** On October 27, 2013, Plaintiff selected from the Google Play library the "AppDialer Pro -  
19 T9 app searching" App published by third-party pilgr.

20 **86.** Plaintiff thereafter purchased the AppDialer Pro—T9 app searching App for \$2.95  
21 through a Buyer Contract by sending Defendants his purchase authorization information,  
22 confirming and authorizing use, in the Buyer Contract, of some information he had stored with  
23 the Defendants and agreeing to the then-current GWToS in tandem with clicking the software  
24 button authorizing the purchase.

25 **87.** Upon receipt of Plaintiff's purchase authorization information, Defendants debited  
26 Plaintiff's Payment Instrument, collected the \$2.95 sales price, retained 30% (\$0.89), and made  
27 Plaintiff's PII - including his name, email, and zip code - available to App Vendor pilgr.  
28

1 88. On March 2, 2014, Plaintiff selected from the Google Play library the “BroApp” App  
2 published by third-party Factorial Products Pty. Ltd.

3 89. Plaintiff thereafter purchased the BroApp App for \$1.99 through a Buyer Contract by  
4 sending Defendants his purchase authorization information, confirming and authorizing use, in  
5 the Buyer Contract, of some information he had stored with the Defendants and agreeing to the  
6 then-current GWToS in tandem with clicking the software button authorizing the purchase.

7 90. Upon receipt of Plaintiff’s purchase authorization information, Defendants debited  
8 Plaintiff’s Payment Instrument, collected the \$1.99 sales price, retained 30% (\$0.60), and made  
9 Plaintiff’s PII - including his name, email, and zip code - available to App Vendor Factorial  
10 Products Pty. Ltd.

11 91. On March 2, 2014, Plaintiff selected from the Google Play library the “Out There” App  
12 published by third-party Mi-Clos Studio.

13 92. Plaintiff thereafter purchased the Out There App for \$3.99 through a Buyer Contract by  
14 sending Defendants his purchase authorization information, confirming and authorizing use, in  
15 the Buyer Contract, of some information he had stored with the Defendants and agreeing to the  
16 then-current GWToS in tandem with clicking the software button authorizing the purchase.

17 93. Upon receipt of Plaintiff’s purchase authorization information, Defendants debited  
18 Plaintiff’s Payment Instrument, collected the \$3.99 sales price, retained 30% (\$1.20), and made  
19 Plaintiff’s PII - including his name, email, and zip code - available to App Vendor Mi-Clos  
20 Studio.

21 94. Defendants gave Plaintiff receipts for the App purchases he made through Buyer  
22 Contracts.

23 95. In all, Defendants received \$26.37 from Plaintiff, and retained 30%, or \$7.91 of Plaintiff’s  
24 money in exchange for the service and promises rendered as part of the Buyer Contracts entered  
25 into between Plaintiff and Defendants.

26 96. Plaintiff did not agree that his PII could or would be transmitted to the App Vendors’  
27 Google Wallet Accounts.  
28

1 97. Plaintiff paid money for a service - namely, the purchase of an App pursuant to the Buyer  
 2 Contract he entered as contained in the GWToS - but did not receive the service to which he was  
 3 entitled.

4 98. Many of the Apps Plaintiff purchased, including the Tasker, Drop7, n7player Full Version  
 5 Unlocker, motiongraph, Gem Miner 2, App Dialer Pro-T9, BroApp, and Out There Apps, were  
 6 available to download from platforms other than the Play Store.

7 *The Market Value of PII*

8 99. Personally-identifying information, like what is defined as PII herein, is priced, bought,  
 9 and sold for marketing and other purposes. Indeed, Defendants themselves conducted a program  
 10 involving the Screenwise Data Collector wherein Defendants would compensate program  
 11 participants in exchange for their using a device that monitored users' home network usage  
 12 including, without limitation, PII which may be inputted into web pages.<sup>3</sup>

13 100. The PII at issue here was made available to App Vendors who also knew, because of the  
 14 purchase, that the Plaintiff was interested in the kind of product the Vendor offered, and, because  
 15 of the payment, that the person whose PII the Defendants transferred to their Google Wallet  
 16 accounts was creditworthy.

17 101. There is a robust market for PII.

18 102. Defendants' business of providing online services to consumers and then profiting from  
 19 selling access to those consumers' personal information to third parties is part of a multi-billion  
 20 dollar per year industry.<sup>4</sup>

21 103. It has been observed that "[w]ebsites and stores can...easily buy and sell  
 22 information...with the intention of merging behavioral data with demographic and geographic  
 23

24 <sup>3</sup> Casey Johnston, *Google paying users to track 100% of their Web usage via little black box*,  
 25 available at <https://arstechnica.com/gadgets/2012/02/google-paying-users-to-track-100-of-their-web-usage-via-little-black-box/> (last visited August 8, 2017).

26 <sup>4</sup> Steve Lohr, *Unboxed—Rewarding Consumers for Providing Personal Data*, New York Times,  
 27 July 17, 2010, available at [http://www.nytimes.com/2010/07/18/business/18unboxed.html?\\_r=1](http://www.nytimes.com/2010/07/18/business/18unboxed.html?_r=1)  
 28 (last visited Aug. 8, 2017).



1 data in ways that will create social categories that advertisers covet and target with ads tailored to  
2 them or people like them.”<sup>5</sup>

3 **104.** The FTC has observed that companies will pay premiums for the ability to precisely target  
4 certain consumers.<sup>6</sup>

5 **105.** On February 28, 2011, the Wall Street Journal highlighted Allow, Ltd., one of many  
6 companies that offer to sell people’s personal information, on their behalf, for mutual profit.<sup>7</sup>

7 **106.** One such company allows consumers to sell their personal information directly to  
8 interested buyers.<sup>8</sup>

9 **107.** In *Property, Privacy, and Personal Data*, Professor Paul M. Schwartz wrote:

10 [P]ersonal information is an important currency in the new millennium. The  
11 monetary value of personal data is large and still growing, and corporate America  
12 is moving quickly to profit from this trend. Companies view this information as a  
corporate asset and have invested heavily in software that facilitates the collection  
of consumer information.<sup>9</sup>

13 **108.** Transmitting PII to App Vendors’ Google Wallet accounts releases to them a marketable  
14 and valuable asset while denying Plaintiff and the Class the value of choosing whether to reveal  
15 or sell such information to those same App Vendors.<sup>10</sup>

16 **109.** Defendants’ practices - including providing services to consumers and profiting from the  
17 manipulation of personal information provided to them thereby - have helped Defendants achieve  
18 a market valuation exceeding \$400 billion.<sup>11</sup>

19  
20 <sup>5</sup> Joseph Turow et al., *Americans Reject Tailored Advertising and Three Activities That Enable It*,  
Sept. 29, 2009, available at <http://ssrn.com/abstract=1478214> (last visited Aug. 8, 2017).

21 <sup>6</sup> Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change*,  
22 Preliminary Staff Report at 24 (Dec. 2010).

23 <sup>7</sup> Julia Angwin and Emily Steel, *Web’s Hot New Commodity: Privacy*, Wall Street Journal, Feb.  
28, 2011 (Ex. D)

24 <sup>8</sup> See <https://datacoup.com/docs#how-it-works> (last visited Aug. 8, 2017).

25 <sup>9</sup> Paul M. Schwartz, *Property, Privacy, and Personal Data*, 117 Harv. L. Rev. 2055, 2056-57  
(2004).

26 <sup>10</sup> See <http://zipcodedownload.com/compare/casestudy> (last visited April 21, 2017).

27 <sup>11</sup> Alice Truong, *Google just had one of the best days in Wall Street history*, available at  
28 <https://qz.com/457527/google-just-had-one-of-the-best-days-in-wall-street-history/> (last visited



110. Defendants have paid consumers to collect their internet browsing information including, without limitation, those users' related PII.

111. Defendants have contemplated that they "can build a data exchange/trading platform allowing individual data owners to transact with others directly, or openly sell their data to any bidders."<sup>12</sup>

112. Google Wallet consumers provide consideration for some of Defendants' services with their personal information: they provide their personal information in exchange for use of Google Wallet with Google Play and for Defendants' promises not to disclose their information to third parties without consent.

113. Defendants use the personal information they collect from Google Wallet consumers to generate personal recommendations in the Google Play App Store, which makes Google Play more attractive to App Vendors and users, and increases the chances that Defendants will profit from additional App sales.

114. Defendants similarly use consumers' personal information to improve the Google Play search tool, ensuring that Google Play's search results are organized to present consumers with Apps they are more likely to purchase. Driving users toward Apps they are more likely to buy also makes Google Play more attractive to App Vendors.

115. Defendants charge each App Vendor \$25 in exchange for the ability to market their products via the Google Play store.<sup>13</sup>

116. Customer data at issue in this case that is used for financial card processing also has economic value for App Vendors, who can use such data for marketing and other purposes. Third-parties have established processes to help App and other vendors organize and integrate such data to help increase sales. App Vendors use such personal information to build customer

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August 8, 2017)

<sup>12</sup> Jessica E. Vascellaro, *Google Agonizes on Privacy as Ad World Vaults Ahead*, Wall Street Journal, Aug. 20, 2010, (Ex. D).

<sup>13</sup> See <https://support.google.com/googleplay/android-developer/answer/113468?hl=en> (See: "Step 3: Pay registration fee")(last visited Aug. 8, 2017).

1 profiles and develop personalized marketing efforts. Google promotes to App Vendors the  
 2 prospect of in-App sales using Wallet and thus the benefit of advertising to consumers after they  
 3 buy the App.

#### 4 ***Harm Resulting from Defendants' Conduct***

5 **117.** By paying money to Defendants for purchasing an App, Buyers are entitled to the benefit  
 6 of Defendants' privacy promises under the associated Buyer Contract.

7 **118.** Defendants, by disclosing PII to App Vendors without need or justification, and contrary  
 8 to the terms and conditions binding Defendants, deprived Buyers of the benefit of the applicable  
 9 terms, conditions, and covenants under the Buyer Contracts and diminished the value of the  
 10 resulting transactions.

11 **119.** Defendants, by virtue of their above-described conduct, have received a monetary benefit  
 12 - 30% of every Paid App purchase price - and the collection of personal information, causing  
 13 Plaintiff and the Class the loss of economic and proprietary value.

14 **120.** The value of Plaintiff's and the Class' PII, as a result of Defendants' improper disclosures,  
 15 has been quantifiably reduced along with the value of their Paid App purchase transactions.

#### 16 **Class Allegations**

17 **121.** Pursuant to Cal. Code of Civ. Proc. § 382 and/or under Cal. Bus. & Prof. Code  
 18 §§ 17203, 17204, Plaintiff brings this action as a class action on behalf of himself and the  
 19 following presently defined Class and Subclass:

- 20 **i.** CLASS: All individuals in the United States who, between March 1, 2012 and  
 21 April 30, 2014 (the "Class Period"), (i) purchased a Paid App on the Google Play  
 22 Store that cost less than \$300, (ii) using a credit or debit card via their Google  
 23 Wallet account.
- 24 **ii.** EU SUBCLASS: All members of the Class who, during the Class Period,  
 25 purchased an App from an App Vendor located in a European Union member state  
 26 at the time of the sale.

1 **122.** Excluded from the proposed Class and Subclass are Plaintiff's counsel, Defendants'  
2 counsel, Defendants' current and former officers and directors, and any member of the judiciary  
3 presiding over this action.<sup>14</sup>

4 **123.** The members of the Class are so numerous that individual joinder of their claims is  
5 impracticable.

6 **124.** There are questions of law and fact common to Plaintiff and the other Class Members,  
7 which common questions predominate over any questions affecting only individual members.  
8 Pursuant to Defendants' above-described conduct, the common questions of law and fact include,  
9 but are not limited to:

10 i. Did Defendants disclose Plaintiff's and Class Members' PII to third-party App  
11 Vendors?

12 ii. Was Defendants' disclosure of PII to third-party App Vendors unnecessary to  
13 process App purchases?

14 iii. Did Defendants' disclosure of PII violate the requirements of the Buyer Contracts  
15 associated with App purchases?

16 iv. Did Defendants' conduct violate California's Unfair Competition Law, Cal. Bus.  
17 Prof. Code § 17200 *et seq.*?

18 v. Did Plaintiff and the Class lose money and/or property due to Defendants'  
19 conduct?

20 **125.** Plaintiff's claims are typical of the claims of other members of the Class, who used the  
21 Google Wallet payment-processing service during the Class Period to purchase Paid Apps and  
22 whose PII was disclosed to third parties without authorization.

23 **126.** Plaintiff has no adverse or antagonistic interests to those of the Class and has retained  
24 counsel experienced in complex consumer class action litigation.

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26  
27 <sup>14</sup> References to the "Class" are also to the "Subclass," unless stated otherwise. The class  
28 definitions and class period are subject to modification following discovery.

127. A class action is superior to other available means for the fair and efficient adjudication of this controversy and concerns standardized conduct and terms. The damage suffered by individual Class Members is relatively small compared to the burden and expense entailed by individual litigation of the claims against Defendants. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the Class Action device provides the benefit of a single adjudication, and presents no unusual management difficulties under the circumstances here.

128. The claims asserted herein are based on California law, which, Defendants indicate– is applicable to the Class as a whole by virtue of the GWToS choice of law provisions.

129. Defendants’ applicable terms are substantially similar for the entire Class and Subclass, and Defendants’ herein-described conduct occurred on a systematic, rather than individualized, basis. Defendants’ records contain information sufficient to identify members of the Class and Subclass.

### Claims

130. The following Claims are pleaded in the alternative to the fullest extent permitted by law.

#### Count I - Breach of Contract

131. Plaintiff re-alleges each of the preceding paragraphs as if fully set forth herein, and brings this cause of action individually and on behalf of the Class.

132. The GWToS set forth the terms of each Buyer Contract between Plaintiff and the Class Members, and Defendants.

133. Plaintiff, Class Members and Defendants only enter into Buyer Contracts in connection with purchase of an App; Buyer Contracts do not arise in connection with Free App downloads.

134. At all relevant times, Plaintiff and Class Members accepted the GWToS for their Buyer Contracts for App purchases, and performed their obligations under the GWToS.

135. Each Buyer Contract states, “By agreeing to these Terms of Service, you authorize Google Wallet to charge your selected card when you make online purchases,” and makes applicable GWToS that provide privacy protections.

1 **136.** Defendants' payment-processing services provided under Buyer Contracts are not free:  
2 Defendants keep a percentage of the purchase price for each App purchase they process.

3 **137.** To the degree Defendants claim fees are owed by App Vendors, not Buyers, Defendants  
4 impose on Buyers the obligation to pay fees that are owed by App Vendors, relieving the  
5 Defendants of the associated risk of non-payment, ensuring that Defendants immediately receive  
6 their portion of the Buyer's payment for the App, and gaining for the Defendants the benefit of  
7 any time value of money arising because of any time gap between collection of the App Price and  
8 Defendants' payment to the App Vendor.

9 **138.** Plaintiff's and Class Members' Buyer Contracts prohibited Defendants from sharing  
10 Plaintiff's and the Class's personal information with App Vendors except (i) as permitted under  
11 the GPP; (ii) as necessary to process the transaction and maintain Plaintiff's and the Class's  
12 accounts; or (iii) to complete Plaintiff's and the Class's registration for a service provided by a  
13 third party.

14 **139.** Upon purchase through Buyer Contracts, Plaintiff and Class Members sent purchase-  
15 related Packets to Defendants, who then used PII within the Packets to process payments for the  
16 App purchases.

17 **140.** In processing the payments, Defendants received Plaintiff's and Class Members'  
18 payments for the Apps.

19 **141.** Defendants retained a portion of each payment rather than transmitting it in full to the  
20 respective App Vendors.

21 **142.** Defendants materially breached the terms of the associated Buyer Contract by divulging  
22 Plaintiff's and Class Members' PII in the course of processing Plaintiff's and Class Members'  
23 App purchases.

24 **143.** Plaintiff and the Class were damaged and deprived the benefit of the terms and conditions  
25 of the Buyer Contracts as a result of Defendants' breaches thereof.

26 **144.** Plaintiff and the Class were also damaged to the degree the value of Plaintiff's and the  
27 Class' PII, as a result of Defendants' improper disclosures, has been quantifiably reduced along  
28 with the diminished value of their Paid App purchase transactions.

**Count II - Breach of Covenant of Good Faith and Fair Dealing**

145. Plaintiff re-alleges each of the preceding paragraphs as if fully set forth herein, and brings this cause of action individually and on behalf of the Class.

146. Buyer Contracts give rise to an implied duty of good faith and fair dealing.

147. The GWToS present standardized and non-negotiable terms.

148. By executing Buyer Contracts, and making payments, Plaintiff and Class Members fulfilled all conditions required to endow them with a right to receive the benefit of Defendants' privacy promises.

149. Defendants' unauthorized disclosures, of PII that Plaintiff and Class Members provided to Defendants, deprive Plaintiffs of the benefit of Defendants' privacy promises.

150. Defendants interfered with the Plaintiff's and Class's right to receive the privacy protections to which they were entitled by subverting Defendants' privacy representations and allowing disclosure of PII to third-party App Vendors, despite such disclosure not being necessary or authorized under the GWToS.

151. At all times, Defendants were aware of how their Google Wallet payment processing system functioned and of their privacy obligations under the GWToS which prohibited unnecessary disclosures.

152. The agreed purpose of the GWToS was to enable Buyers to securely purchase Apps offered on the Google Play store while safeguarding Buyers' PII.

153. Defendants withheld, in bad faith, facts related to how the Google Wallet payment processing system actually worked: i.e., that it systematically divulged PII that did not need to be divulged.

154. Defendants' conduct harmed Plaintiff and the Class by depriving them of the benefit of the protections under the Buyer Contract, diminishing the value of the Buyer Contracts, and quantifiably reducing the value of their PII.

**Count III - Violation of the Unfair Competition Law ("UCL"),  
Cal. Bus. & Prof. Code § 17200**

155. Plaintiff re-alleges each of the preceding paragraphs as if fully set forth herein, and brings



1 this cause of action individually and on behalf of the Class.

2 **156.** Defendants' conduct and decisions giving rise to Plaintiff's and the Class' claims, on  
3 information and belief, in substantial part took place at Defendants' shared primary place of  
4 business in California.

5 **157.** Defendants, via the GWToS' choice-of-law provisions, have asserted that the laws of the  
6 State of California shall apply to litigation concerning their services.

7 **158.** Defendants' acts and practices as alleged herein constitute unlawful and unfair business  
8 practices in violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et*  
9 *seq.*

### 10 *Unlawful Conduct*

11 **159.** Defendants' above-described conduct violates the Defendants' own GWToS.

12 **160.** The Google Wallet Privacy Policy prohibited Defendants from sharing Plaintiff's and the  
13 Class's personal information with other companies outside of Google except: (i) as permitted  
14 under the Google Privacy Policy; (ii) as necessary to process the transaction and maintain the  
15 account; and (iii) to complete the registration for a service provided by a third party.

16 **161.** Cal. Bus. and Prof. Code § 22576 prohibits Defendants from violating their own privacy  
17 policies.

18 **162.** Defendants' business acts and practices of unnecessary and unauthorized disclosures, to  
19 third-party App Vendors, of identity, location, phone number, and/or other PII that Plaintiff and  
20 the Class provided to Defendants in Packets are unlawful because they violate the GWToS,  
21 California statute, and the Defendants' duties of good faith and fair dealing.

### 22 *Unfair Conduct*

23 **163.** Defendants' conduct, as alleged herein, is additionally oppressive, immoral, unethical, and  
24 unscrupulous and caused Plaintiff and the Class substantial injury in violation of the California  
25 Unfair Competition Law's ("UCL's") prohibition against "unfair" conduct. Cal. Bus. & Prof.  
26 Code § 17200, *et seq.*

27 **164.** Plaintiff and the Class paid Defendants, and Defendants permanently retained, a portion of  
28 monies Plaintiff and the Class paid, using Google Wallet, for Apps offered on the Google Play



1 store.

2 **165.** Plaintiff's and the Class's payments were made under the GWToS that limited the  
3 disclosure of PII to defined circumstances as defined herein above.

4 **166.** Defendants breached the GWToS by making unauthorized and unnecessary disclosures of  
5 the PII, including, e.g., name, address, and/or zip codes, to third-party App Vendors.

6 **167.** Defendants' practice described in this Complaint substantially harmed the Plaintiff and  
7 Class Members in ways they could not reasonably avoid because Defendants' did not disclose  
8 their practice of divulging PII, and instead promised to avoid doing so except as necessary under  
9 the GWToS.

10 **168.** The Plaintiff and the Class derive no countervailing benefit from permitting Defendants to  
11 represent in the GWToS that Defendants will not share PII with third-party App Vendors, when,  
12 contrary to these agreements and representations, they do.

13 **169.** Plaintiff and the Class could not have anticipated Defendants' practice of unnecessarily  
14 divulging PII to App Vendors when the GWToS promises to protect Buyers' privacy by  
15 disclosing PII only as described in the Google Wallet Privacy Policy.

16 **170.** The GWToS does not authorize Defendants' unnecessary transfer to App Vendors of PII  
17 placed into Packets created to facilitate a purchase.

18 **171.** Plaintiff's and the Class's payments to Defendants improperly and unfairly benefit  
19 Defendants because Defendants represented, as part of the bargain, that they would not disclose  
20 PII to third-party App Vendors, except as allowed under the Google Wallet Privacy Policy.

21 **172.** Defendants could have easily avoided causing the injuries suffered by Plaintiff and the  
22 Class by refraining from divulging PII.

23 **173.** Plaintiff and the Class were powerless to stop Defendants from disclosing PII to App  
24 Vendors because Defendants divulged this information without the knowledge, consent, and/or  
25 authorization of Plaintiff and the Class.

26 **174.** Additionally, and/or in the alternative, Defendants' practice as described above offends  
27 public policy tethered to the State constitutional right of privacy, Constitution, Article I, Section  
28 1, and public policy as per Cal. Bus. & Prof. Code § 22576.

175. Defendants' practice directly contradicts the policy underlying the California Attorney General's Joint Statement of Principles to which Google and other major App marketers (including, e.g., Apple and Microsoft) agreed on or about February 22, 2012.

176. Defendants' practice violates the policy outlined in the Consumer Privacy Bill of Rights, introduced by the White House in February of 2012. Specifically, Defendants' conduct violates the following provisions of that policy:

- i. Individual Control: Consumers have a right to exercise control over what personal data companies collect from them and how they use it.
- ii. Transparency: Consumers have a right to easily understandable and access information about privacy and security practices.
- iii. Respect for Context: Consumers have a right to expect that companies will collect, use, and disclose personal data in ways that are consistent with the context in which consumers provide the data.
- iv. Security: Consumers have a right to secure and responsible handling of personal data.

177. Defendants' practices of divulging PII denied Plaintiff and the Class of meaningful individual control over how Defendants used PII.

178. Defendants' GWToS masked Defendants practice of routinely divulging PII by telling Plaintiff and the Class that it would not be divulged except in limited, specific circumstances.

179. Divulging PII is not consistent with the context of App purchases when such purchases can be accomplished without divulging PII.

180. Defendants' practice increased the risk of identity theft faced by Plaintiff and the Class.

181. As a direct and proximate result of Defendant's above-described unlawful and/or unfair conduct, Plaintiff and the Class lost money they paid to Defendants for services Defendants promised as part of the purchase of Apps, but did not provide, namely facilitation of an App purchase with the privacy protections promised in the GWToS.

182. Defendants unfairly profit from the money Plaintiff and Class Members paid for services they did not receive.

1 **183.** Consequently, Plaintiff and the Class have lost money or property, and are entitled to  
 2 injunctive relief, restitution, disgorgement of monies paid by Plaintiff and the Class and received  
 3 and retained by Defendants as a result of their App purchases, and all other applicable relief  
 4 allowed under Section 17200 *et seq.*

### 5 **Prayer for Relief**

6 **WHEREFORE**, Plaintiff prays for the following relief:

- 7 a. An order certifying the Class, and appointing Plaintiff as Class representative and  
 8 Plaintiff's counsel as class counsel;
- 9 b. A finding and declaration that Defendants, by their above-described conduct, have  
 10 violated the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et*  
 11 *seq.*, and California law as set forth above;
- 12 c. An award of injunctive and other equitable relief including, *inter alia*: (i) an order  
 13 prohibiting Defendants from engaging in the wrongful and unlawful acts described  
 14 herein; (ii) an order requiring Defendants to refrain from disclosing Buyer  
 15 information in the absence of those Buyers' specific authorization; and (iii) an order  
 16 requiring Defendants to conspicuously, precisely, and truthfully display in the  
 17 GWPP the manner in which they collect data from users and thereafter distribute,  
 18 disclose, use or divulge such data;
- 19 d. An award of all damages to Plaintiff and the Class available under applicable law;
- 20 e. An award of restitution and/or disgorgement, including interest thereon, to Plaintiff  
 21 and the Class;
- 22 f. Establishment of a constructive trust, until further order of the Court, consisting of  
 23 monies Defendants improperly collected or received from their above-described  
 24 illicit conduct, including a reasonable portion of the monies collected, from Plaintiff  
 25 and the Class, in connection with the sale of Apps via the Google Play store and/or  
 26 the processing of associated payments via Google Wallet;
- 27 g. Reasonable attorneys' fees and costs; and
- 28 h. Such other and further relief as the Court deems appropriate.

**Jury Demand**

Plaintiffs demand a jury trial as to all matters so triable.

Respectfully submitted,



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Counsel for Plaintiff

# EXHIBIT A

8/20/2014

Terms of Service - Buyer (US)

## Terms of Service - Buyer (US)

# Google Wallet – Terms of Service

October 23, 2012

These Terms of Service are a legal agreement, between you, Google Inc. and Google Payment Corp., a wholly-owned subsidiary of Google Inc., that governs your access to and use of Google Wallet. The services described below are provided by Google Payment Corp. Please review these Terms of Service before you decide whether to accept them and continue with the registration process.

By agreeing to these Terms of Service, you represent the following:

- You are between 13 to 17 years of age and creating a Google Wallet account for the sole and limited purpose of redeeming Google Play Gift Card value for select items that are eligible for purchase by you on Google Play, subject to applicable laws and upon Google's discretion;
- or
- You are 18 years old or older; and
- Capable of entering into a legally binding agreement.

If you are a business entity, you also represent that you are:

- duly authorized to do business in the country or countries where you operate; and
- your employees, officers, representatives, and other agents accessing Google Wallet are duly authorized to access Google Wallet and to legally bind you to these Terms of Service and all transactions conducted under your username and password.

To use Google Mobile Wallet for in-store purchases with the Google Wallet Mobile Service and an NFC mobile phone, The Bancorp Bank will issue you a Google Wallet Virtual Card. To use Google Wallet for certain online purchases, The Bancorp Bank will issue you a Google Wallet Virtual OneTime Card.

By agreeing to these Terms of Service, you authorize Google Wallet to charge your selected card when you make online purchases using Google Wallet or in-store purchases using the Google Wallet Mobile Service. Please see Section 4 for more information.

1. Definitions
2. Registration for Google Wallet
3. Processing Service
4. Google Mobile Wallet
5. Google Play Gift Cards
6. Limitations on Use of the Services
7. Privacy
8. Username and Password Information
9. Electronic Communications
10. Termination of Service

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11. Responsibility for Taxes
12. No Endorsement of Products
13. Indemnification
14. Disclaimer
15. Limitation of Liability; Force Majeure
16. Governing Law
17. Notice
18. Modification of the Terms of Service
19. Assignment
20. Survival
21. Other Provisions

## 1. Definitions.

The following defined terms appear in these Terms of Service.

- **“Applicable Law”**: Any and all federal, state and local laws, rules and regulations applicable to the Services.
- **“Bancorp”**: The Bancorp Bank.
- **“Buyer”**: A Customer that uses a Service to purchase goods and/or services from Sellers or merchants.
- **“Carrier”**: A mobile telephone operator approved by GPC that offers a Carrier Billing Account.
- **“Carrier Billing Service”**: The payment process whereby GPC, on behalf of Seller, submits a Payment Transaction to the Carrier for billing to the Buyer’s Carrier Billing Account.
- **“Carrier Billing Account”**: The monthly or other periodic billing account provided to you by your Carrier that you register with the Processing Service to fund certain Payment Transactions.
- **“Customer”**: A person that registers for the Service(s).
- **“Google”** means Google Inc.
- **“Google Account”**: The account you create with Google Inc. for the use of Google Services, as defined in the Google Terms of Service.
- **“Google Mobile Wallet”**: The Google Wallet features that enable you to (i) make purchases at locations that accept contactless payments using a Google Wallet Virtual Card and (ii) make purchases on participating online merchant websites using a Google Wallet Virtual OneTime Card
- **“Google Wallet Account”**: The account that is assigned to you upon your completion of the Google Wallet set-up.
- **“Google Wallet Virtual Card”** The MasterCard-branded prepaid debit virtual payment card product issued by Bancorp downloaded and stored on the near-field communication chip of a mobile phone.
- **“Google Wallet Virtual Card Terms of Use”** The terms and conditions between you and Bancorp which are applicable to use of the Google Wallet Virtual Card.
- **“Google Wallet Virtual OneTime Card”**: The MasterCard-branded prepaid debit virtual payment card product issued by Bancorp for one time use in the Google Mobile Wallet Service at certain online merchants.
- **“Google Wallet Virtual OneTime Card Terms of Use”**: The terms and conditions between you and Bancorp which are applicable to use of the Google Wallet Virtual OneTime Card.
- **“Google Web Sites”**: The web site pages of Google, a Google affiliate or a Google-affiliated or partner



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company.

- **“GPC”**: Google Payment Corp.
- **“Offer(s)”**: Vouchers, coupons, discounts or other valuable content that can be redeemed at a participating merchant.
- **“Online Card Processing Service”**: The service by which GPC holds a Buyer’s registered Payment Instrument information and, at the time of a Buyer’s purchase from a Seller using the Google Wallet, GPC provides such information to the Seller (or the Seller’s card processor, including potentially GPC itself) for processing through the applicable card network, which Seller, in turn, provides to the issuer of the Payment Instrument for approval and financial settlement through the card network to the Seller.
- **“Payment Instrument”**: A credit card, debit card or Carrier Billing Account that is registered in a Customer’s Google Wallet Account for Payment Transactions. A Payment Instrument must be associated with a billing address in a country where the applicable Service is made available.
- **“Payment Transaction”**: The processing of a payment that results in the debiting, charging, or other related transaction, of the Purchase Amount to a Buyer’s Payment Instrument.
- **“Processing Service”**: The Online Card Processing Service and the Carrier Billing Service.
- **“Product”**: Any merchandise, good or service that a Buyer may purchase using a Service.
- **“Purchase Amount”**: The dollar amount of a Payment Transaction to pay for a Product, and any related fees, taxes or shipping charges, as applicable.
- **“Rewards Program Item(s)”**: The Google Mobile Wallet service which enables you to store information on your mobile device or in GPC’s servers for reward program points, or other incentives that can be redeemed at a participating merchant for Products.
- **“Seller”**: A Customer that uses the Processing Service to process Payment Transactions from Buyers.
- **“Service(s)”**: The Google Wallet products and services described in these Terms of Service that are or facilitate (i) the Processing Service, and, (ii) the Google Mobile Wallet.
- **“We”, “us”**: Google Inc. and Google Payment Corp.
- **“You”, “you”**: A person that applies to, or registers to use, or uses, the Services.

## 2. Registration for Google Wallet.

### 2.1 Getting started with Google Wallet.

When you sign up for Google Wallet, you are creating a Google Wallet Account that is associated with your Google Account. Depending on the Services of Google Wallet you use, you may be asked to provide information such as your name, contact information, Payment Instrument information, date of birth, and/or your social security number. We may verify your registration information with a third party verification vendor. In some cases, we may ask you to send us additional information, such as a copy of your driver’s license or passport, or to answer additional information to help us verify your identity. Finally, if you register a Carrier Billing Account, we will ask you to provide your mobile telephone number and the name and billing address associated with that number.

The information you provide will be used by us to determine if you are eligible to begin and/or continue to use Google Wallet Services. Provision and use of such data is subject to the [Google Wallet Privacy Notice](#), as described more fully in Section 7 below.

### 2.2 USA PATRIOT ACT NOTICE.

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To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each individual or business that opens an account or requests credit.

### **2.3 Accuracy of Registration Information.**

You are responsible for providing accurate registration information and for keeping your registration information up to date, or notifying us in the event of changes. Changes to your primary residence address may require you to accept new Google Wallet terms of service for the country to which you have moved. In addition, as certain services are currently offered only in select countries, changes to your primary residence address may result in your becoming ineligible for certain services.

### **2.4 Relation to your Google Account.**

In order to use Google Wallet Services, you must have a Google Account which is in good standing with Google, in accordance with the Google Terms of Service. If you or Google closes your Google Account for any reason, your Google Wallet Account will also be closed and you will no longer be able to access the Google Wallet Services.

## **3. The Processing Service.**

### **3.1 Getting Started with the Processing Service.**

In order to use the Processing Service, you must complete all required information elements on the Processing Service registration web pages. You must register a Payment Instrument to make Payment Transactions and pay fees and other obligations arising from your use of the Processing Service.

You authorize GPC to confirm that your Payment Instrument is in good standing with the issuing financial institution and/or Carrier (as applicable), including, but not limited to, by submitting a request for a payment authorization and/or a low dollar credit and/or debit to the Payment Instrument, in accordance with the relevant card association or Carrier rules as applicable. You also authorize GPC to obtain from time to time a credit report and/or to otherwise make credit or other background inquiries as GPC deems appropriate to evaluate your registration for or continued use of the Processing Service. GPC, in its sole and absolute discretion, may refuse to approve or may terminate existing registrations for the Processing Service with or without cause or notice, other than any notice required by any Applicable Law, and not waived herein.

### **3.2 Online Card Processing Service.**

The Online Card Processing Service facilitates a credit or debit card purchase by a Buyer from a Seller that is registered with GPC to receive certain merchant payment processing services. The Online Card Processing Service stores information from Buyers, such as their Payment Instruments and shipping information. GPC processes Payment Transactions on behalf of Sellers, as the agent of the Seller, through the appropriate credit card or debit card network or through a participating Carrier, as applicable. When Buyer chooses to pay for Products with the Processing Service, Buyer authorizes the Seller to submit charges (and, in the case of refunds, credits) to Buyer's registered Payment Instrument. GPC will assist the Seller in accessing the card networks and

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processing the Payment Transaction. Purchases made through the Online Card Processing Service are also subject to the terms and conditions governing Buyer's Payment Instrument between Buyer and the issuer of the Payment Instrument. Buyer is responsible for any charges and related fees that may be imposed under the Payment Instrument terms and conditions as a result of Buyer's use of a Payment Instrument.

You acknowledge and agree that your purchases of Products are transactions between you and the Seller, and not with GPC, Google or any of their affiliates. Neither GPC nor Google are a party to your Payment Transaction for the purchase of Products, and GPC, Google, or other GPC affiliates are not a Buyer or a Seller in connection with any Payment Transaction, unless expressly designated as such in the listing of the Product on a Google Web Site.

### 3.3 Carrier Billing Service.

Certain Sellers that use the Processing Service may permit you to have your purchase billed to your Carrier Billing Account. These additional terms apply when you use Carrier Billing through the Processing Service:

- Registering your Carrier Billing Account as a payment option requires your mobile telephone number, name and billing address of the Carrier Billing Account associated with that number. You consent to your Carrier providing this information to GPC, and you will review the information during sign-up for Carrier Billing, and correct any inaccuracies. This information will be used by GPC for the purpose of establishing your Carrier Billing Account as a Payment Instrument in your Google Wallet, and for operating the Processing Service. You also agree that GPC and your Carrier may share information with each other regarding your Carrier Billing activity in order to charge or credit your Carrier Billing Account and otherwise complete payments for purchases, reversals, refunds or adjustments of Payment Transactions, resolve disputes, provide customer support, and for other Carrier Billing-related purposes.
- When you choose to pay for a transaction with Carrier Billing, you authorize the Seller and GPC, as agent of and processor for the Seller, to submit charges and credits to your Carrier, and your Carrier to make such charges and credits to your Carrier Billing Account, as necessary to complete the Payment Transaction, or to complete the reversal, refund, or adjustment of that Payment Transaction.
- You can use Carrier Billing to purchase applications (e.g., downloadable or networked applications, wallpapers, ring-tones, games, and productivity tools) ("Apps") for and with your compatible device from certain merchants on Google Play. These Apps are not sold by your Carrier, Google, GPC, or Google Play. You can identify the Seller of the App at the point of purchase.
- Purchases made through Carrier Billing are also subject to the terms and conditions of your Carrier Billing Account. You are responsible for any charges and related fees that may be imposed under your Carrier Billing Account terms and conditions as a result of your use of Carrier Billing.
- You may contact your Carrier's customer service if you have a question about the charges or fees billed to your Carrier Billing Account. You should direct support questions regarding products, such as Google Play Apps, purchased through Carrier Billing to the Seller from whom you purchased the App.
- None of Carrier, Google, GPC, or Google Play is responsible for any product (including an App) purchased with Carrier Billing, including download, installation, use, transmission failure, interruption, or delay, refunds, third party advertisements you may encounter while using the product or App, alterations any App may make to the functionality of your device, including any changes that may affect your Carrier's plan, service, or billing, or any content or website you may be able to access through the App.

### 3.4 One Time Wallet Account.

Where offered by a Seller, you may use the Processing Service to make a Payment Transaction through a one-time Google Wallet Buyer account, also referred to as a “One Time Account”, “Guest Account” or a similar name. If you make a Payment Transaction through a One Time Account, these Terms of Service apply except:

- You will create the One Time Account at the time you make the Payment Transaction and you can use the One Time Account only for that single Payment Transaction.
- You will not create a username or password for the One Time Account.
- Information about a Payment Transaction made through the One Time Account will be accessible at the time of the Payment Transaction and subsequently through a dedicated webpage link provided to you.
- Information about a Payment Transaction made through a One Time Account will not be accessible through any other Google Wallet Account you may have.

### **3.5 Subscriptions/Recurring Transactions Purchases**

The subscription services described in this section are not currently available when using the Google Mobile Wallet.

In the event that the Processing Service (other than Google Mobile Wallet) offers you the ability to pay for subscriptions, your subscription will start when you click “Accept & buy” on a subscription purchase. This is a recurring billing transaction. Unless otherwise stated, your subscription and the relevant billing authorization will continue indefinitely until cancelled by you.

By clicking “Accept & buy,” you authorize the applicable Seller to bill your chosen Payment Instrument during the subscription at the Purchase Amount. The Purchase Amount will continue to be charged to your Payment Instrument, until you cancel your subscription, unless as otherwise stated in the terms and conditions. The billing rate is subject to change by the Seller during the subscription period.

Your Payment Instrument will be billed each period based on the date of the subscription purchase.

You may cancel a subscription at any time, but the cancellation will not become effective until the end of the current billing period. You will not receive a refund for the current billing period. You will continue to be able to access the relevant subscription for the remainder of the current billing period.

We reserve the right to issue refunds or credits at our sole discretion. If we issue a refund or credit, we are under no obligation to issue the same or similar refund in the future.

### **3.6 Permissible Payment Transactions.**

You may only use the Processing Service to process a Payment Transaction for a Product that is purchased from a Seller through a legitimate, bona fide sale of the Product. The Processing Service may not be used to process a Payment Transaction, or otherwise transfer money between a Buyer and Seller, that is unrelated to a purchase of a Product. The Processing Service may not be used to receive cash advances from Sellers or to facilitate the purchase of cash equivalents (travelers checks, prepaid cards, money orders, etc.). You may not use the Processing Service to process Payment Transactions in connection with the sale or exchange of any illegal goods or services or any other underlying illegal transaction.



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You agree that you will not use the Processing Service to process Payment Transactions for any Products that violate these Terms of Service, other policies or rules applicable to the Processing Service, or Applicable Law. The current policy that establishes the Products and other transactions that may not be paid for with the Processing Service is provided here. Failure to comply with these limitations may result in suspension or termination of your use of the Processing Service.

Additional terms may apply for the use of the Google Wallet Virtual Card and the Google Wallet Virtual OneTime Card, as described in Section 4.

### **3.7 Purchases Eligible for "Instant Refund"**

The Instant Refund option is in addition to the merchant's refund/cancellation policy that is disclosed by the merchant at the time of purchase.

Certain internet content, products and application features ("Content") may be available for purchase from merchants with an Instant Refund option that allows you to cancel the purchase before your Payment Instrument is charged. Content eligible for this Instant refund option will be identified to you by a banner on the "Buy" button which states: "with Instant Refund".

By clicking the "Buy" button on a merchant website where this feature is available, you authorize the merchant, and its service providers, including Google, to bill your Payment Instrument at the stated rate for the Content, plus any applicable tax, without further action by you. Your payment order will be deemed to have been received thirty minutes after you click the "Buy" button. If after clicking the "Buy" button, you determine that you do not wish to retain access to the Content, you may click the "get an Instant Refund" link for up to thirty minutes. Upon clicking the "get an Instant Refund" link, the purchase transaction with the merchant will be canceled, the Content will no longer be visible to you, and your Payment Instrument will not be charged for the purchase. Instant Refund refers only to the cancellation of your purchase transaction within thirty minutes of your clicking the "Buy" button. After thirty minutes have elapsed, any refund or cancellation of your purchase will be subject to the merchant's general refund policies.

Purchased Content will continue to be hosted by the merchant from whom it was purchased, and you must be logged into your Google Account to view your purchased Content. Certain purchased Content may become unavailable to you if you cancel your Google Account, or if the provider of such Content determines to no longer host it.

The Instant Refund option is only available for certain purchases, as described above. In addition, your use of the Instant Refund option may be restricted if, in our discretion, we determine that your use of the Instant Refund option is excessive or as otherwise stated in these Terms of Service. If your use of the Instant Refund option has been restricted for a purchase as to you, the banner on the "Buy" button which states "with Instant Refund" will not be visible to you.

### **3.8 Service Fees.**

GPC does not charge a fee to use the Processing Service as a Buyer. The financial institution that issues, or the Carrier that provides, your Payment Instrument may charge a fee in connection with the debiting or charging of the Payment Instrument resulting from the Payment Transaction. You should consult the terms and conditions

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governing your Payment Instrument for more information about any such fees.

### 3.9 Disputes.

GPC will provide various tools to assist Customers in communicating with each other to resolve a dispute that may arise between Buyers and Sellers with respect to their transaction.

For transactions other than those involving the Google Wallet Virtual Card or the Google Wallet Virtual OneTime Card, if Customers are unable to resolve a dispute, GPC can mediate disputes between buyers and sellers if either party requests assistance. If this occurs, GPC will review the dispute and propose a non-binding solution, if appropriate. For more detailed information, please see our [Frequently Asked Questions](#).

For disputes applicable to the Google Wallet Virtual Card and the Google Wallet Virtual OneTime Card, please see Section 4.

GPC may offer a feedback or other ranking system on the Processing Service to assist you in evaluating other Customers of the Service. You acknowledge that any such feedback or ranking system represents solely the opinion of other Customers of the Processing Service, and is not an opinion, representation, or warranty by GPC with respect to other Customers of the Processing Service.

You agree to release GPC, Google, and other GPC affiliates, and their agents, contractors, officers and employees, from all claims, demands and damages (actual and consequential) arising out of or in any way connected with a dispute. You agree that you will not involve GPC in any litigation or other dispute arising out of or related to any transaction, agreement, or arrangement with any Seller, other Buyer, advertiser or other third party in connection with the Service. If you attempt to do so, (i) you shall pay all costs and attorneys' fees of GPC, Google, and other GPC affiliates and shall provide indemnification as set forth below, and (ii) the jurisdiction for any such litigation or dispute shall be limited as set forth below. However, nothing in these Terms of Service shall constitute a waiver of any rights, claims or defenses that you may have with respect to a Payment Transaction under the Buyer's card issuer agreement or Carrier Billing Account terms and conditions, the card association rules or applicable state and federal laws, such as the federal Truth in Lending Act or the Electronic Fund Transfer Act.

If you are a California resident, you hereby expressly waive California Civil Code § 1542, which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if not known by him must have materially affected his settlement with the debtor."

### 3.10 Refunds.

(a) If you believe your Google Wallet Account has been opened or used in an unauthorized manner in connection with a Payment Transaction, please see our [fraud protection process](#). Also, please see our [Frequently Asked Questions](#) for more information on how GPC protects you from fraud.

(b) Except as set forth in these Terms of Service, all Payment Transactions processed through the Processing Service are non-refundable to Buyer by GPC and are non-reversible by Buyer through the Processing Service. You may have additional refund or charge-back rights under your Payment Instrument issuer agreement or

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applicable state and federal laws. You should review your periodic statement received from the issuer of your Payment Instrument which will reflect all purchase transactions through the Processing Service. The refund procedure described in this Section 3.10(b) does not apply to transactions involving the Google Wallet Virtual Card or the Google Wallet Virtual OneTime Card. For refund policies applicable to these products, please see Section 4 below.

### **3.11 Unclaimed Property.**

If GPC is holding funds due to you arising from a Payment Transaction processed through the Processing Service or otherwise, and GPC is unable to contact you and has no record of your use of the Processing Service for several years, Applicable Law may require GPC to report these funds as unclaimed property. If this occurs, GPC will try to locate you at the address shown in our records, but if GPC is unable to locate you, it may be required to deliver any such funds to the applicable state as unclaimed property. GPC reserves the right to deduct a dormancy fee or other administrative charges from such unclaimed funds, as permitted by Applicable Law.

### **3.12 GPC Not a Banking Institution.**

GPC processes Payment Transactions through the Processing Service as an agent of and on behalf of Sellers. GPC is not a bank or other chartered depository institution. Funds held by GPC or its service providers (including any bank service providers) in connection with the processing of Payment Transactions are not deposit obligations of Buyer and are not insured for the benefit of Buyer by the Federal Deposit Insurance Corporation or any other governmental agency.

## **4. The Google Mobile Wallet.**

### **4.1 General Description.**

The Google Mobile Wallet may allow you to make Payment Transactions (i) in-store using the Google Wallet application which resides on your smart phone or (ii) online at certain merchants using your Payment Instruments which are stored on Google Wallet servers or hosted by a third party provider designated by GPC (the “**Google Mobile Wallet Service**”).

The Google Mobile Wallet Service may enable you to store on GPC’s servers and access your Payment Instruments, Offers, Reward Program Items, Payment Instrument transaction history or available balance information and payment credentials. The Google Mobile Wallet Service gives you the ability to make purchases at participating merchant locations using an eligible NFC mobile device or on participating merchant websites online. GPC will charge your Payment Instruments for transactions using the Google Mobile Wallet Service. In those instances where the Google Mobile Wallet Service may be enabled for non-NFC mobile devices, the Google Mobile Wallet Service may have reduced functionality.

### **4.2 Getting Started with Google Mobile Wallet.**

(a) In order to use the Google Mobile Wallet, you must (i) be a resident of the United States, (ii) link Google Mobile Wallet to your Google Wallet and (iii) if you are using the Google Mobile Wallet on an NFC enabled



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mobile device, set a PIN code. You are responsible for maintaining the confidentiality of your PIN code. You agree to notify Google Wallet immediately of any unauthorized use of Google Mobile Wallet or any other breach of security regarding the Google Mobile Wallet of which you have knowledge.

(b) **Your Payment Instruments.** In order to store your Payment Instruments in your Google Wallet Account, you will need to provide the information requested by Google Wallet.

(c) GPC does not make any representation or verify that any of your Payment Instruments are in good standing or that the issuer of your Payment Instrument will authorize or approve any purchase of Products from a merchant when you use the Google Mobile Wallet in connection with that purchase.

#### **4.3 Using the Google Mobile Wallet Service.**

(a) You can use the Google Mobile Wallet Service in two ways:

(i) In store using the Google Wallet Virtual Card stored on your mobile device by logging in to your Google Wallet Account and waving the NFC mobile device near the merchant's NFC reader; or

(ii) Online using the Google Wallet Virtual OneTime Card issued to you for such transaction when you log into your Google Wallet Account online through your mobile device, at a computer, or

other device with online capabilities.

By using your Google Wallet Account using either of the methods described above to make Payment Transactions, you authorize GPC to charge your selected Payment Instrument for such Payment Transaction.

(b) Storing Payment Instruments. Through the Google Mobile Wallet Service, Google Mobile Wallet may enable you to store and access Payment Instruments, Offers, or Reward Program Item information, including balance and transaction information, on Google's servers. You can store a Payment Instrument with the Google Mobile Wallet Service by providing the information requested on the Google Mobile Wallet Service sign-up page, including payment credentials and billing address. If you have already stored a Payment Instrument through the Processing Service, that Payment Instrument may be available for use with the Google Mobile Wallet Service.

#### **4.4. Transacting with Google Wallet Mobile Service and Google Wallet Virtual Card.**

(a) Issuance of the Google Wallet Virtual Card. To enable your use of the Google Mobile Wallet Service via your NFC mobile device, GPC has arranged for Bancorp to provide you with access to a MasterCard®-branded virtual prepaid debit payment card product, the Google Wallet Virtual Card, which is stored on your mobile device. By using the Google Mobile Wallet Service and the Google Wallet Virtual Card, you also agree to the Google Wallet Virtual Card Terms of Use, which may be updated from time to time. For avoidance of doubt, the Google Wallet Virtual Card Terms of Use are between you and Bancorp, not Google or GPC. In addition, the terms and conditions applicable to your chosen Payment Instrument also apply to all transactions involving the Google Wallet Virtual Card. Please refer to the terms and conditions applicable to your chosen Payment Instrument. By requesting the Google Mobile Wallet Service on your NFC enabled mobile device, you are requesting the issuance of the Google Wallet Virtual Card in order to facilitate your use of the Service.

(b) Using the Google Mobile Wallet Application. In order to use the Google Mobile Wallet Application on an

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NFC mobile device, follow the instructions on the Google Mobile Wallet Application to log in and then place your NFC mobile device near the merchant's NFC reader. When you place your mobile device near the merchant's NFC reader, your Google Wallet Virtual Card information will be transferred from your NFC mobile device to the merchant for use in processing the Payment Transaction. The Google Wallet Virtual Card is a prepaid debit card that can be used to make purchases when you use the Google Wallet Mobile Service at a merchant location that accepts contactless payments, even if the issuer of your registered debit or credit card is not a Google Wallet partner for NFC transactions. The Google Wallet Virtual Card is different from your debit or credit card registered in Google Wallet. The merchant will not receive your registered debit or credit card information. Rather, Bancorp will settle the Google Wallet Virtual Card payment to the merchant. Then, GPC will bill your selected Payment Instrument for the total purchase amount of the Payment Transaction.

(c) Payment Transaction Limits. There are maximum dollar limits on purchase payments that you may make using Google Wallet Virtual Card. Maximum purchase payments may not exceed the lesser of \$1,000 or any daily purchase transaction limit imposed by your selected credit or debit card. GPC may, at its discretion, increase this maximum upon verification of your identity. In addition, Google Wallet Virtual Card purchase transactions below this amount may be declined if GPC is unable to complete a funding transaction to your selected Payment Instrument. The Google Wallet Virtual Card may not be used for transactions in which you request cash back from the merchant. In addition, you may be subject limitations on the amount or type of transaction or merchant as per the terms and conditions of your selected credit or debit card. Please refer to the terms and conditions of your selected credit or debit card. You are responsible for any charges and related fees that may be imposed under the terms and conditions applicable to the selected Payment Instrument for any Payment Transaction using a Google Wallet Virtual Card. The Google Wallet Virtual Card is not a credit card, and GPC and Bancorp are not extending you credit in connection with your use of the Google Mobile Wallet Service or the Google Wallet Virtual Card. GPC will instruct Bancorp to deny a requested Google Wallet Virtual Card purchase if GPC has reason to believe that it will not be able to initiate a charge to your selected Payment Instrument, or if GPC otherwise believes that GPC will not be able to obtain funds from you to complete the requested purchase payment. We reserve the right to decline any Google Wallet Virtual Card-initiated Payment Transaction.

#### **4.5 Transacting with Google Mobile Wallet Service and Google Wallet Virtual OneTime Card.**

(a) Issuance of the Google Wallet Virtual OneTime Card. To enable your use of the Google Mobile Wallet Service online using your mobile phone, a computer, or other device, GPC holds a Buyer's registered Payment Instrument information and facilitates payment to participating online merchants using a Google Wallet Virtual OneTime Card, after which GPC will charge the Buyer's selected Payment Instrument for the purchase. When you use the Google Mobile Wallet Service to make a purchase online, The Bankcorp Bank will issue you a Google Wallet Virtual OneTime Card, a MasterCard-branded virtual prepaid debit card product that can only be used for the specific purchase for which it was issued. After issuance of the Google Wallet Virtual OneTime Card, GPC facilitates the payment to a merchant through such card, and then charges your selected Payment Instrument. When you choose to pay for a purchase online using the Google Mobile Wallet Service, you authorize the merchant and GPC to submit charges (and, in the case of refunds, credits) to your Google Wallet Virtual OneTime Card and the applicable registered Payment Instrument. By using a Google Wallet Virtual OneTime Card, you also agree to the Google Wallet Virtual OneTime Card Terms of Use, which may be updated from time to time. For the avoidance of doubt, the Google Wallet Virtual OneTime Card Terms of Use are between you and Bancorp, the issuer of the Google Wallet Virtual OneTime Card, and not Google, GPC, or any of their affiliates.

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(b) Using a Google Wallet Virtual OneTime Card To Make Merchant Purchases. The Google Wallet Virtual OneTime Card is a prepaid debit card that can be used to make online purchases at a registered merchant's site that accepts MasterCard-branded prepaid debit cards. The Google Wallet Virtual OneTime Card is different from the debit or credit card registered in a Buyer's Google Wallet Account. The merchant will not receive your full registered debit or credit card information. Rather, Bancorp will settle the Google Wallet Virtual OneTime Card payment to the merchant. Then, GPC will charge the applicable debit or credit card that is registered your Google Wallet Account and selected by the Buyer as the default Payment Instrument for the Purchase Amount.

(c) Payment Transaction Limits. There are maximum dollar limits on purchase payments that you may make using a Google Wallet Virtual OneTime Card. Maximum purchase payments may not exceed the lesser of \$2,000 or any daily purchase transaction limit imposed by your selected credit or debit card. GPC may, at its discretion, increase this maximum upon verification of your identity. In addition, Google Wallet Virtual OneTime Card purchase transactions below this amount may be declined if GPC is unable to complete a funding transaction to your selected Payment Instrument. The Google Wallet Virtual OneTime Card may not be used for transactions in which you request cash back from the merchant. In addition, you may be subject limitations on the amount or type of transaction or merchant as per the terms and conditions of your selected credit or debit card. Please refer to the terms and conditions of your selected credit or debit card. You are responsible for any charges and related fees that may be imposed under the terms and conditions applicable to the selected Payment Instrument for any Payment Transaction using a Google Wallet Virtual Card. The Google Wallet Virtual OneTime Card is not a credit card, and GPC and Bancorp are not extending you credit in connection with your use of the Google Mobile Wallet Service or the Google Wallet Virtual OneTime Card. GPC will instruct Bancorp to deny a requested Google Wallet Virtual OneTime Card purchase if GPC has reason to believe that it will not be able to initiate a charge to your selected Payment Instrument, or if GPC otherwise believes that GPC will not be able to obtain funds from you to complete the requested purchase payment. We reserve the right to decline any Google Wallet Virtual OneTime Card-initiated Payment Transaction.

#### **4.6. Offers and Reward Program Items.**

(a) Saving an Offer to Google Mobile Wallet. Offers may be presented to you on Google websites or mobile applications, participating third party websites or mobile applications, through the Google Mobile Wallet Application, or at a merchant's physical location. If you are logged into your Google Wallet account, you may select an Offer and store the Offer to appear in your Google Wallet account for redemption with a participating merchant.

(b) Storing Reward Program Items. In order to store Reward Program Items in Google Mobile Wallet, you must provide all information required by Google Mobile Wallet.

(c) Redemption of an Offer/Reward Program Item. In order to redeem an Offer and/or Reward Program Item stored in Google Mobile Wallet with a participating merchant, you may, at the request of the merchant, either (i) permit the merchant to read the Offer and/or Reward Program Item off the screen of the mobile device, or (ii) place the mobile device near the NFC reader to transmit the Offer or Rewards Program Item redemption information to merchant, (iii) use the Google Mobile Wallet Service to redeem an Offer or Rewards Program Item in conjunction with a payment transaction, or (iv) provide the promotion code or other code associated with an Offer and/or Rewards Program Item to the participating merchant upon such merchant's request. By taking any of the foregoing actions, you authorize the information regarding the Offer and/or Reward Program Item to be transferred from your mobile device to the merchant for redemption. The redemption is processed by the



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merchant at its discretion, in accordance with the merchant's terms and conditions for the Offer and/or Reward Program Item, as applicable. If you have questions regarding redemption of an Offer and/or Reward Program Item, please contact the merchant.

#### **4.7 Rewards.**

GPC does not guarantee and makes no representations that the issuer or the associated payment network of any Payment Instruments you have registered with the Google Mobile Wallet will honor any usual or promotional rewards or benefits (including any purchase protection or insurance) for your purchases using the Google Mobile Wallet. The issuer and associated network of your Payment Instruments will determine whether or not any rewards or benefits will apply to purchases made using the Google Mobile Wallet. GPC and Google are not providing you with any rewards or benefits (including purchase protection and insurance) for your use of the Google Mobile Wallet.

#### **4.8 Communication with Issuers.**

By electing to use Google Mobile Wallet, you authorize GPC, directly or through the Google Mobile Wallet to communicate with the issuer of your Payment Instrument, Offer or Reward Program Item to provide or obtain any information required by that issuer. An issuer that provides this information does not endorse and is not responsible for Google Mobile Wallet.

#### **4.9 Third Party Providers.**

GPC may have arranged for third party providers to provide products or services to you through the Google Mobile Wallet ("Third Party Providers"). In order to use these products or services, you may be required to agree to additional terms and conditions from those Third Party Providers, and may be subject to additional requirements of the Third Party Provider. By agreeing to these Terms of Service or continuing to use the Google Mobile Wallet, you hereby agree to any Third Party Provider terms that apply to your use of such products and services through Google Mobile Wallet which may be updated from time to time. For avoidance of doubt, these Third Party Provider terms are between you and the applicable Third Party Provider, not GPC.

#### **4.10 GPC is Not a Banking Institution, Issuer, or Processor.**

Google Mobile Wallet provides you with the ability to store Payment Instruments, Offers, and Reward Program Items, and to communicate such information to participating merchants. GPC is not a bank or other chartered depository institution. GPC is not an issuer of any Payment Instrument, Offer, or Reward Program Item. Your purchases of Products and/or redemptions of Offers or Reward Program Items using Google Mobile Wallet are transactions between you as a Buyer and the merchant as the merchant, and not with GPC or any Google affiliates. GPC is not a party to your purchase of Products or redemption of Offers or Reward Program Items. With respect to Google Mobile Wallet transactions, all payment processing is handled solely by the merchant, and GPC is not involved in the merchant's processing of the payment. For the Payment Transaction facilitated with the Google Wallet Virtual Card or the Google Wallet Virtual OneTime Card, GPC handles the payment to the merchant and the charging of your registered credit or debit card to conduct your payment for the purchase.

These Terms of Service do not amend or otherwise modify your agreement with the issuer of your Payment

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Instrument, Offer, or Reward Program Item, and you are responsible for ensuring your use of the Google Mobile Wallet complies with such agreements. You also are responsible for all charges and/or debits to your Payment Instrument resulting from purchases of Products or redemptions of Offers or Reward Program Items using the Google Mobile Wallet, in accordance with such agreements. In the event of any inconsistency between these Terms of Service and your agreement with the issuer of your Payment Instrument, Offer, or Reward Program Item, these Terms of Service govern the relationship between you and GPC solely with respect to Google Mobile Wallet, and your agreement with the issuer of your Payment Instrument, Offer, or Reward Program Item governs the relationship between you and the issuer of the Payment Instrument, Offer, or Reward Program Item. You acknowledge and agree that you are solely responsible for the Payment Instrument, Offer, Reward Program Item, and other information you enter or otherwise store in the Google Mobile Wallet. GPC is not responsible for the accuracy or availability of any information you enter or otherwise store in the Google Mobile Wallet, including, without limitation, whether such information is current and up-to-date.

#### **4.11 Advertising.**

Some of the features of Google Mobile Wallet may be supported by advertising revenue and may display advertisements and promotions. In consideration for GPC granting you access to and use of Google Mobile Wallet, you agree that GPC may place such advertising. In addition, you may have the choice to opt-in to allowing information from Google Mobile Wallet to be used by GPC and Google in order to present you with more relevant advertising, Offers and Reward Program Items.

#### **4.12 Third Party Fees.**

You are responsible for any fees charged by your telecommunications provider, Payment Instrument, Offer, or Reward Program Item issuer, merchant, or any other third party in connection with your use of Google Mobile Wallet.

#### **4.13 General Terms relating to the use of the Google Mobile Wallet Service.**

(a) GPC will instruct Bancorp to deny a requested Google Mobile Wallet Service purchase if GPC has reason to believe that it will not be able to initiate a charge to your selected Payment Instrument, or if GPC otherwise believes that GPC will not be able to obtain funds from you to complete the requested purchase payment. We reserve the right to decline any Google Mobile Wallet initiated Payment Transaction. We reserve the right to suspend your use of any Google Mobile Wallet Service for any reason.

(b) You acknowledge and agree that your purchases through the Google Mobile Wallet Service are transactions between you and the merchant and not with GPC, Google or any of their affiliates.

(c) The Google Wallet Mobile Service may only be used for U.S. dollar transactions within the fifty U.S. states and the District of Columbia. The Google Wallet Mobile Service does not support payments in foreign currencies.

(d) You do not have any ownership interest in the prepaid account associated with the Google Wallet Virtual Card or the Google Wallet Virtual OneTime Card, and you may only use these products to make purchase transactions in accordance with these terms.

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(e) Your Authorization for Google Mobile Wallet Service Billing. By using the Google Mobile Wallet Services to make a purchase payment, you authorize the use of the Google Wallet Virtual Card or the Google Wallet Virtual OneTime Card to complete a payment to the merchant, and you authorize GPC to charge the applicable credit card or debit card that is registered in Google Wallet and selected by you as the default Payment Instrument for the Purchase Transaction. The charge by GPC to your registered Payment Instrument is a separate payment transaction from the Google Wallet Mobile Service purchase transaction. This funding transaction will identify GPC or Google within the payment transaction identifier on your Payment Instrument statement.

(f) Receipts At Merchant Locations. You may receive a transaction receipt from a merchant when you use the Google Mobile Wallet Service. This merchant receipt will reflect the last four digits of the Google Wallet Virtual Card or the Google Wallet Virtual OneTime and not your credit card or debit card number that will be charged by Google Mobile Wallet Service for the payment. GPC is under no obligation to provide you with a receipt or other written confirmation in connection with the charge made at a merchant location or with an online merchant.

(g) No Extension of Credit. Neither of the Google Wallet Virtual Card or Google Wallet Virtual OneTime Card is a credit card, and GPC and Bancorp are not extending credit in connection with your use of the Google Wallet Virtual Card or the Google Wallet Virtual OneTime Card.

(h) Limits on Merchants and Purchases. We may impose limits on merchants where you can use the Google Mobile Wallet Service. For example, you cannot use the Google Mobile Wallet Service to purchase outbound telemarketing services or direct marketing travel related arrangement services. Please refer to the Google Wallet content policy for additional restrictions on permissible transactions using the Google Mobile Wallet Service. Please also refer to the Google Wallet Virtual Card Terms of Use or the Google Wallet Virtual OneTime Card Terms of Use, as applicable, for further information on additional limitations on permissible payments using the applicable Google Mobile Wallet Service.

(i) Periodic Statements. You agree that we will not provide you with a separate periodic statement for your use of the Google Wallet Virtual Card or the Google Wallet Virtual OneTime Card. An electronic transaction statement showing all transactions with the Google Wallet Virtual Card and the Google Wallet Virtual OneTime Card and your other Google Wallet Account transactions in electronic format will be made available free of charge at [www.wallet.google.com/manage](http://www.wallet.google.com/manage). You are responsible for reviewing the Google Wallet Virtual Card and the Google Wallet Virtual OneTime Card transactions reflected on the Google Wallet Account transaction statement.

(j) Customer Service. If you have an inquiry regarding a payment made with the Google Mobile Wallet Service, or you believe there has been an error or unauthorized transaction regarding a payment transaction using Google Wallet and the Google Wallet Virtual Card, or the Google Wallet Virtual OneTime Card, please contact Google Wallet Support at 1-888-249-1855.

(k) Error Resolution. Google Wallet provides you with certain rights and protections in the event of an error or unauthorized transaction arising from your use of Google Wallet in which the Google Wallet Virtual Card or the Google Wallet Virtual OneTime Card has been used to facilitate a payment to a merchant. With respect to Payment Transactions made using the Google Wallet Virtual Card or the Google Wallet Virtual OneTime Card, see the applicable Terms of Use between you and the issuer of these card, Bancorp for more details regarding these protections and a statement of your potential liability for use of the Google Wallet Virtual Card, or the Google Wallet Virtual OneTime Card. You may also have certain rights and protections that are provided to you under your agreement with the issuer of your Payment Instrument or Applicable Law with respect to the charges

for a purchase payment made to your registered credit or debit card. You should consult your agreement with the issuer of your Payment Instrument for details.

(l) No Relationship with Issuer of Payment Instruments. Use of the Google Mobile Wallet Service is not approved by, or offered in conjunction with the issuer of your Payment Instrument. Your Payment Instrument issuer may impose fees, transaction limits, or other limitations on funding transactions the GPC submits to obtain funding for Google Mobile Wallet Service transactions.

## 5. Google Play Gift Cards.

**Eligibility and Redemption.** Google Play Gift Cards ("Gift Cards") are valid only for users who are 13 years of age or older, and who are residents of the USA. Gift cards are issued by Google Payment Corporation ("GPC"). To redeem a Google Play Gift Card, you will need access to the internet, and you will need to create a Google Wallet account. For users between 13-17 years of age, your Wallet enrollment is limited solely to redemption of Gift Cards on Google Play. Google Play Gift Cards must be redeemed toward the purchase of eligible products on <http://play.google.com>. Purchases are deducted from the Gift Card balance. Any unused Google Play Gift Card balance will be placed in the recipient's Google Play Gift Card account when redeemed. Google may provide Gift Card purchasers with information about the redemption status of Google Play Gift Cards that they purchase. To view Google Play Gift Card balances, visit <https://wallet.google.com/viewWallet>.

**Limitations.** The Gift Card may be used for purchases of eligible items on Google Play only. Limits may apply to redemption and use. The Gift Card is not redeemable for cash or other cards, is not reloadable or refundable, cannot be combined with other non-Google Play Gift Card balances in your Google Wallet account, and cannot be resold, exchanged or transferred for value, except as required by law. If an order exceeds the Gift Card amount, the transaction will be declined unless more value is added to the Google Play Gift Card balance. Once a Gift Card is purchased, the risk of loss and title for the Gift Card passes to the purchaser. GPC disclaims all express or implied warranties as to the Google Play card and Google Play. Gift Card terms may be subject to change in our sole discretion subject to Applicable Law. To view the most recent Google Play Gift Card terms online, visit [play.google.com/about/card-terms.html](http://play.google.com/about/card-terms.html).

**No Fees or Expiration.** No fees or expiration dates apply to this Gift Card. Any refunded amounts, if applicable, will be credited back to your Google Play Gift Card balance for future use under the same terms, unless otherwise required by law.

**Fraud.** Google is not responsible if a Gift Card is lost, stolen, destroyed or used without your permission. Google will have the right to close customer accounts and bill alternative forms of payment if a fraudulently obtained Gift Card is redeemed and/or used to make purchases on Google.com.

**Online Assistance and Customer Care.** To view your Google Play Gift Card balance, visit <https://wallet.google.com/viewWallet>. To speak to customer care about a Gift Card issue, call us at 1-855-466-4438.

## 6. Limitations on Use of Services.

Notwithstanding any limitations described elsewhere in this Agreement, we may establish general practices and limits concerning use of the Services, including without limitation individual or aggregate transaction limits on the



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dollar amount or number of Payment Transactions during any specified time period(s). We reserve the right to change, suspend or discontinue any aspect of the Services at any time, including hours of operation or availability of the Services or any Service feature, without notice and without liability. We also reserve the right to impose limits on certain Service features or restrict access to some or all of the Services without notice and without liability. We may decline to process any Payment Transaction without prior notice to Buyer or merchant.

GPC may delay payment processing of suspicious transactions or attempted Payment Transactions which may involve fraud or misconduct, or violate Applicable Law, these Terms of Service, or other applicable GPC policies, as determined in GPC's sole and absolute discretion. Buyer authorizes the charge or debit to Buyer's Payment Instrument, by GPC as agent of the Seller, as necessary to complete processing of a Payment Transaction. Buyer also authorizes the crediting or debiting, as applicable, to Buyer's Payment Instrument, by GPC as agent of the Seller, in connection with chargebacks, reversals, refunds, or adjustments through the Service by a Seller.

We may limit or suspend your use of one or more Services at any time, in our sole and absolute discretion. If we suspend your use of a Service, we will attempt to notify you by electronic mail. Suspension of your use of a Service will not affect your rights and obligations pursuant to these Terms of Service arising before or after such suspension or with respect to any non-terminated Services.

The Google Mobile Wallet is intended for use on mobile devices, Android operating systems, or other devices or operating systems approved by Google, as provided to you directly by Google or your mobile carrier. You are strictly prohibited from using the Google Mobile Wallet on a mobile device or Android operating system, or other device or operating system approved by Google, that has been modified or customized in any way. You bear sole responsibility for such unauthorized use of the Google Mobile Wallet on a modified mobile device, Android operating system, or other device or operating system approved by Google.

## **7. Privacy.**

You understand and agree that personal information provided to Google or GPC in connection with the Services is subject to the Google Wallet Privacy Policy: <http://www.google.com/wallet/privacy.html>. By agreeing to these Terms of Service you hereby agree to the Google Wallet Privacy Policy, which may be updated by Google or GPC from time to time. You understand and agree that, to the extent permitted by Applicable Law, any data you provide to GPC in connection with the Services may be shared with Google and, conversely, any data you provide to Google in connection with the Services may be shared with GPC.

You may opt-in to providing location data through your mobile device so that Google Mobile Wallet can provide you with more relevant advertising, payment information, Offers or Reward Program Items based on your location. If you opt-in to providing location data, you consent to the collection, use, sharing, and onward transfer of location data, as further set forth in the Google Wallet Privacy Policy. Google may receive information through your mobile device about your actual location (such as GPS signals sent by your mobile device) or information that can be used to approximate a location (such as a cell ID).

## **8. Username and Password Information.**

You are responsible for: 1) maintaining the confidentiality of your username and password, 2) any and all transactions by persons that you give access to or that otherwise use such username or password, and 3) any

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and all consequences of use or misuse of your username and password. You agree to notify us immediately of any unauthorized use of your username or password or any other breach of security regarding the Services of which you have knowledge.

If you are a business entity, you agree that all officers, employees, agents, representatives and others having access to the username and/or password shall be vested by you with the authority to use the Services and to legally bind you. You shall be responsible for all actions by current and former officers, employees, agents, representatives and others, regardless of whether authorized by you, that access the Services using the business' user name and password.

## **9. Electronic Communications.**

GPC, Google Wallet, and Third Party Providers may be required to provide certain disclosures, notices and communications (collectively "Communications") to you in written form. Pursuant to these Terms of Service, we will deliver such Communications to you in electronic form. Your agreement to the Terms of Service confirms your ability and consent to receive such Communications electronically, rather than in paper form.

### **Electronic delivery of communications.**

You agree and consent to receive electronically all Communications provided to you in connection with your Google Wallet account and your use of the Google Wallet Services. Communications include: (a) agreements and policies you must agree to in order to use the Google Wallet Services (e.g., the Google Wallet Terms of Service and Privacy Notice), including updates to those agreements and policies; (b) payment authorizations and transaction receipts or confirmations; (c) account statements and history; and, (d) all other communications or documents related to or about your account and your use of the Google Wallet services.

Electronic Communications shall be deemed to be received by you upon delivery in the following manner: (a) posting them to your Google Wallet account on the Google Wallet website or in the Google Wallet mobile application; (b) posting them on or in Google or Google Wallet websites and mobile applications; (c) sending them via electronic mail to the email address you used to create your Google and Google Wallet account registrations; or, (d) otherwise communicating them to you via the Google Wallet Services.

It is your responsibility to log on to your Google Wallet account and the Google Wallet Services to open and review Communications that we deliver to you through those means. We may, but are not obligated to under these Terms of Service, provide you with notice of the posting of a Communication to your Google Wallet account or the Google Wallet Services.

You should maintain copies of electronic Communications by printing paper copies or saving electronic copies, as applicable.

### **Hardware and software requirements**

In order to access and retain electronic Communications, you will need to maintain the following computer hardware and software at your own expense:

1. a computer or mobile device with internet or mobile connectivity;

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2. a current web browser that includes 128-bit encryption (e.g. Internet Explorer version 6.0 and above, Firefox version 2.0 and above, Chrome version 3.0 and above, or Safari 3.0 and above) with cookies enabled;
3. Adobe Acrobat Reader version 8.0 (<http://get.adobe.com/reader/>) and above to open documents in .pdf format;
4. access to the valid email address you used to create your Google and Google Wallet account registrations; and,
5. sufficient storage space to save past Communications or an installed printer (or access to Google Cloud Print) to print them.

By giving your consent to these Terms of Service, you confirm that you are able to meet the above requirements, and that you can receive, open, and print or save any Communications referenced in these Terms of Services for your records.

### **Requesting additional copies and withdrawing consent**

The following additional terms will apply to such electronic Communications: (a) you may contact GPC, Google Wallet or the Third Party Provider, as applicable, to request another electronic copy of the electronic Communication without a fee; (b) you may request a paper copy of such electronic Communication within ninety days of the original Communication issuance date, and GPC, Google Wallet or the Third Party Provider, as applicable, reserves the right to charge a fee to provide such paper copy; (c) you may contact Google to update your registration information used for electronic Communications or to withdraw consent to receive electronic Communications; and (d) GPC, Google Wallet or the Third Party Provider reserves the right to terminate your use of Google Wallet and the associated Third Party Provider products and services if you decline or withdraw consent to receive electronic Communications.

You may contact Google in relation to these Terms of Service by using the Contacting Us page in the Help link in the footer of your Google Wallet account.

## **10. Termination of Service.**

We may, in our sole and absolute discretion without liability to you or any third party, terminate your use of one or more Services for any reason, including without limitation inactivity or violation of these Terms of Service or other policies we may establish from time to time.

Upon termination of your use of the Services, you remain liable for all Payment Transactions and any other obligations you have incurred under these Terms of Service. Upon termination, we have the right to prohibit your access to the Services, including without limitation by deactivating your username and password, and to refuse future access to the Services by you or if a business entity, its parent, affiliates or subsidiaries or its or their successors).

## **11. Responsibility for Taxes.**

The reporting and payment of any applicable taxes arising from the use of the Services is your responsibility. You hereby agree to comply with any and all applicable tax laws in connection with your use of the Services, including without limitation, the reporting and payment of any taxes arising in connection with Payment Transactions made

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through the Services.

## 12. No Endorsement of Products.

GPC and Google do not represent or endorse, and shall not be responsible for: (a) the reliability or performance of any Seller, merchant or Third Party Provider; (b) the safety, quality, accuracy, reliability, integrity or legality of any Product, Offer or Reward Program Item; (c) the truth or accuracy of the description of any Product, Offer, or Reward Program Item, or of any advice, opinion, offer, proposal, statement, data or other information (collectively, "**Content**") displayed or distributed, purchased or paid through the Service, or the Google Web Sites; or (d) your ability to buy or redeem Products, Offers or Reward Program Items using the Services. GPC and Google hereby disclaim any liability or responsibility for errors or omissions in any Content in the Services. GPC and Google reserve the right, but shall have no responsibility, to edit, modify, refuse to post or remove any Content, in whole or in part, that in its sole and absolute discretion is objectionable, erroneous, illegal, fraudulent or otherwise in violation of these Terms of Service.

## 13. Indemnification.

You agree to indemnify, defend and hold harmless GPC, Google, and their subsidiaries and other affiliates, and its and their directors, officers, owners, agents, co-branders or other partners, employees, information providers, licensors, licensees, consultants, contractors and other applicable third parties (including without limitation, Bancorp and Paymentech, L.P. and relevant Customers) (collectively "**Indemnified Parties**") from and against any and all claims, demands, causes of action, debt or liability, including reasonable attorneys fees, including without limitation attorneys fees and costs incurred by the Indemnified Parties arising out of, related to, or which may arise from: (i) your use of the Services; (ii) any breach or non-compliance by you of any term of these Terms of Service or any GPC Party policies; (iii) any dispute or litigation caused by your actions or omissions; or (iv) your negligence or violation or alleged violation of any Applicable Law or rights of a third party.

## 14. Disclaimer.

THE SERVICES, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS, AND INFORMATION MADE AVAILABLE ON, PROVIDED IN CONNECTION WITH OR ACCESSIBLE THROUGH THE SERVICES, ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMISSIBLE BY LAW, GPC, GOOGLE, AND THEIR SUBSIDIARIES AND OTHER AFFILIATES, AND THEIR AGENTS, CO-BRANDERS OR OTHER PARTNERS, INCLUDING BUT NOT LIMITED TO, DEVICE MANUFACTURERS (COLLECTIVELY, "**GPC PARTIES**"), MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER FOR THE SERVICES OR THE CONTENT, MATERIALS, INFORMATION AND FUNCTIONS MADE ACCESSIBLE BY THE SOFTWARE USED ON OR ACCESSED THROUGH THE SERVICES, OR FOR ANY BREACH OF SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION THROUGH THE SERVICES. EACH GPC PARTY DISCLAIMS WITHOUT LIMITATION, ANY WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE GPC PARTIES DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. THE GPC PARTIES SHALL NOT BE RESPONSIBLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING, BUT NOT LIMITED TO, SYSTEM FAILURES OR OTHER INTERRUPTIONS THAT



MAY AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION OR SETTLEMENT OF PAYMENT TRANSACTIONS OR THE SERVICES.

THE GPC PARTIES ARE NOT RESPONSIBLE FOR THE ACCURACY OF ANY PAYMENT INSTRUMENT, OFFER, OR REWARD PROGRAM ITEM INFORMATION, INCLUDING, WITHOUT LIMITATION, WHETHER SUCH INFORMATION IS CURRENT AND UP-TO-DATE. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT SUCH INFORMATION IS REPORTED BY THE ISSUER AS OF A PARTICULAR TIME ESTABLISHED BY THE ISSUER AND MAY NOT ACCURATELY REFLECT YOUR CURRENT TRANSACTIONS, AVAILABLE BALANCE, OR OTHER ACCOUNT OR PROGRAM DETAILS AT THE TIME THEY ARE DISPLAYED TO YOU THROUGH THE SERVICES OR AT THE TIME YOU MAKE A PURCHASE OR REDEMPTION. YOU MAY INCUR FEES, SUCH AS OVERDRAFT FEES OR OTHER CHARGES AS A RESULT OF SUCH TRANSACTIONS, PER YOUR AGREEMENT WITH YOUR PAYMENT INSTRUMENT, OFFER, OR REWARD PROGRAM ITEM ISSUER, OR YOUR ATTEMPT TO MAKE A PURCHASE OR REDEMPTION MAY NOT BE SUCCESSFUL.

### **15. Limitations of Liability; Force Majeure.**

IN NO EVENT SHALL ANY GPC PARTY BE RESPONSIBLE OR LIABLE TO YOU OR ANY THIRD PARTY UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY, DAMAGES OR LOSSES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES WHICH MAY BE INCURRED IN CONNECTION WITH ANY GPC PARTY OR THE SERVICES, OR ANY GOODS, SERVICES, OR INFORMATION PURCHASED, RECEIVED, SOLD, OR PAID FOR BY WAY OF THE SERVICES, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, EVEN IF THE GPC PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. IN NO EVENT SHALL THE GPC PARTIES' TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE NET FEES GPC HAS ACTUALLY RECEIVED AND RETAINED FROM YOUR VALID TRANSACTIONS DURING THE THREE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. Each party acknowledges that the other party has entered into these Terms of Service relying on the limitations of liability stated herein and that those limitations are an essential basis of the bargain between the parties. In addition to and without limiting any of the foregoing, no GPC Party shall have any liability for any failure or delay resulting from any condition beyond the reasonable control of such party, including but not limited to governmental action or acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures and Internet disturbances.

### **16. Governing Law.**

These Terms of Service shall be governed by the laws of California, except for California's choice of law rules, and applicable federal United States laws. Each party agrees to submit to personal and exclusive jurisdiction of the courts located in Santa Clara County, California. The parties specifically exclude from application to the Terms of Service the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act.

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## 17. Notice.

In addition to the electronic communications authorized under the Section entitled, "Electronic Communications", statements, notices and other communications to you may be made by mail, email, postings on the Google Web Sites or other reasonable means. We may also provide notices of changes to the Terms of Service or other matters by displaying links to notices on the Google Web Sites. Notice to GPC and Google may be made by mail to:

Google Inc.  
Attn: Google Wallet  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

## 18. Modification of Terms of Service.

We have the right, in our sole and absolute discretion, to change, modify, or amend any portion of these Terms of Service at any time by posting notification here or otherwise communicating the notification to you. The changes will become effective, and shall be deemed accepted by you, after the initial posting and shall apply on a going-forward basis with respect to transactions initiated after the posting date. In the event that you do not agree with any such modification, your sole and exclusive remedy is to terminate your use of the Services.

## 19. Assignment.

You may not assign these Terms of Service or any rights or obligations hereunder, by operation of law or otherwise, without our prior written approval and any such attempted assignment shall be void. We reserve the right to freely assign these Terms of Service and the rights and obligations hereunder, to any third party without notice or consent. Subject to the foregoing, these Terms of Service shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

## 20. Survival.

Upon termination of your use of the Services or termination of these Terms of Service for any reason, in addition to this section, the following sections shall survive termination: 3.2, 3.8 through 3.11, and 9 through 21.

## 21. Other Provisions.

The failure of GPC or Google to exercise or enforce any right or provision of the Terms of Service shall not constitute a waiver of such right or provision. If any provision of these Terms of Service shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms of Service shall otherwise remain in full force and effect and remain enforceable between the parties. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. These Terms of Service, including GPC's or Google policies governing the Services referenced herein, constitutes the entire agreement between you and GPC with respect to the use of the Services. These Terms of Service is not intended and shall not be construed to create any rights or remedies in any parties other than you and GPC, Google, and other GPC affiliates which each shall

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be a third party beneficiary of these Terms of Service, and no other person shall assert any rights as a third party beneficiary hereunder.



# EXHIBIT B

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Privacy Notice

## Privacy Notice

# Google Wallet Privacy Notice

Last modified August 1, 2012

The [Google Privacy Policy](#) describes how we treat personal information when you use Google's products and services. "Google Wallet" is a product offered to Google Account holders. Your use of Google Wallet is therefore subject to the Google Privacy Policy. In addition, the following notice describes our privacy practices that are specific to Google Wallet.

Google Wallet refers to Google payment services that are provided by both Google Inc. and its wholly owned subsidiaries. For US users, that subsidiary is Google Payment Corporation ("GPC"), and for users in the European Economic Area (EEA), it is Google Payment Limited ("GPL") (based in the United Kingdom). For countries outside of the United States and the EEA, please consult the Google Wallet Terms of Service made available to you within the service to learn more about the subsidiary offering the service.

Your use of Google Wallet is governed by the Google Wallet Terms of Service. Please consult the Terms of Service for detailed information about the specific services of Google Wallet. Capitalized terms not defined in this Google Wallet Privacy Notice shall have the meaning ascribed to them in the Terms of Service.

## Information we collect

In addition to the information listed in the [Google Privacy Policy](#), we may also collect the following:

- **Registration information** - When you sign up for Google Wallet, you are creating a Wallet account that is associated with your Google Account. Depending on the services of Google Wallet you use, in addition to the information listed in the [Google Privacy Policy](#), you may be asked to provide the following information: Credit or debit card number and card expiration date, bank account number and expiration date, address, date of birth, last four digits of your social security number, and for sellers or businesses specifically, your business category and certain information about your sales or transaction volume. In addition, for services requiring additional customer or seller identification, you may also be asked to provide your full social security or taxpayer identification number (or some other government-issued identification number). In some cases, we may also ask you to send us additional information or to answer additional questions to help verify your information. Finally, if you register a Carrier Billing Account, we will ask you to provide your mobile telephone number and the name and billing address associated with that number.
- **Information obtained from third parties** - We may obtain information about you from third party verification services, information arising from Google Wallet transactions at merchant locations, information regarding your use of payment methods issued by third parties that are linked to the Google Wallet service, information regarding access to balances held in your Google Wallet account, and information from a Carrier in connection with Carrier Billing.

Also, for sellers, we may obtain information about you and your business from a credit bureau or a

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business information service.

- **Transaction information** - When you use Google Wallet to conduct a transaction, we may collect information about the transaction, including: Date, time and amount of the transaction, a description provided by the seller of the goods or services purchased, any photo you choose to associate with the transaction, the names and email addresses of the seller and buyer (or sender and recipient), the type of payment method used, your description of the reason for the transaction, and the offer associated with the transaction, if any.

## How we use the information we collect

In addition to the uses listed in the [Google Privacy Policy](#), we use the information you provide us, as well as information about you from third parties, in order to provide you with Google Wallet services, and to protect you from fraud, phishing or other misconduct. Such information may also be used to assist third parties in the provision of products or services that you request from them.

Your registration information is stored in association with your Google Account and your registration of a payment method will be stored on Google's servers. In addition, certain data elements may also be stored on your mobile device in encrypted form.

## Use of Google Wallet with third parties

We are not responsible for which merchants or other third parties you choose to share information with from Google Wallet. These include third party provider Wallet services that you register for directly and access through Google Wallet. The third party's receipt of, use of, and disclosure of your personal information from Google Wallet is subject to the third party's privacy policy, data security policy and terms and conditions. This Google Wallet Privacy Notice does not apply to your use of Google Wallet with third parties and any resulting data uses or disclosures by such third parties.

## Information we share

We will only share your personal information with other companies or individuals outside of Google in the following circumstances:

- As permitted under the [Google Privacy Policy](#).
- As necessary to process your transaction and maintain your account.
- To complete your registration for a service provided by a third party.

## Information security

For more information about our security practices, please see the main [Google Privacy Policy](#).

The security of your Google Wallet account depends on you keeping your account password confidential. If you share your account information with a third party, he or she will have access to your account and your personal information.

It is your responsibility to control access to your mobile device and the Google Wallet application on your device, including keeping your PIN confidential and not sharing it with anyone. It is also your responsibility to alert Google or the relevant partner if you believe that the security of the information in the Google Wallet application has been compromised.

## Sharing between affiliates

The information that we collect, including information obtained from third parties, is shared between GPC and its affiliates, including Google Inc., to operate the service. Neither GPC nor its affiliates will share your information with others except as described in this Privacy Notice.

We provide you with the right to opt out of certain sharing between GPC and its affiliates. Specifically, you may choose to opt out of:

- The sharing between GPC and its affiliates of personal information about your creditworthiness; and,
- The sharing of information between GPC and its affiliates for those affiliates to market to you.

We will not share your personal information with anyone outside of GPC or its affiliates except as described in this Privacy Notice. As explained above, Google Wallet is a product offered to Google Account holders. Data you provide to Google Inc. for the purpose of signing up for a Google Account is not affected by the opt-out provisions in this notice.

If you don't want us to share personal information about your creditworthiness between GPC and its affiliates, please click [here](#).

If you don't want us to use any information shared between GPC and its affiliates for those affiliates to market to you, please click [here](#).

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# EXHIBIT C

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Privacy Policy – Privacy &amp; Terms – Google



# Privacy Policy

This is an archived version of our Privacy Policy. View the [current version](#) or [all past versions](#).

Last modified: July 27, 2012

There are many different ways you can use our services – to search for and share information, to communicate with other people or to create new content. When you share information with us, for example by creating a [Google Account](#), we can make those services even better – to show you more relevant search results and ads, to help you connect with people or to make sharing with others quicker and easier. As you use our services, we want you to be clear how we're using information and the ways in which you can protect your privacy.

Our Privacy Policy explains:

- What information we collect and why we collect it.
- How we use that information.
- The choices we offer, including how to access and update information.

We've tried to keep it as simple as possible, but if you're not familiar with terms like cookies, IP addresses, pixel tags and browsers, then read about these [key terms](#) first. Your privacy matters to Google so whether you are new to Google or a long-time user, please do take the time to get to know our practices – and if you have any questions [contact us](#).

## Information we collect

We collect information to provide better services to all of our users – from figuring out basic stuff like which language you speak, to more complex things like which ads you'll find most useful or the people who matter most to you online.

We collect information in two ways:

- **Information you give us.** For example, many of our services require you to sign up for a Google Account. When you do, we'll ask for [personal information](#), like your name, email address, telephone number or credit card. If you want to take full advantage of the sharing features we offer, we might also ask you to create a publicly visible [Google Profile](#), which may include your name and photo.
- **Information we get from your use of our services.** We may collect information about the services that you use and how you use them, like when you visit a website that uses our advertising services or you view and interact with our ads and content. This information includes:

- **Device information**

We may collect device-specific information (such as your hardware model, operating system version, [unique device identifiers](#), and mobile network information including phone number). Google may associate your device identifiers or phone number with your Google Account.

- **Log information**

When you use our services or view content provided by Google, we may automatically collect and store certain information in [server logs](#). This may include:



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- details of how you used our service, such as your search queries.
- telephony log information like your phone number, calling-party number, forwarding numbers, time and date of calls, duration of calls, SMS routing information and types of calls.
- Internet protocol address.
- device event information such as crashes, system activity, hardware settings, browser type, browser language, the date and time of your request and referral URL.
- cookies that may uniquely identify your browser or your Google Account.

#### ◦ Location information

When you use a location-enabled Google service, we may collect and process information about your actual location, like GPS signals sent by a mobile device. We may also use various technologies to determine location, such as sensor data from your device that may, for example, provide information on nearby Wi-Fi access points and cell towers.

#### ◦ Unique application numbers

Certain services include a unique application number. This number and information about your installation (for example, the operating system type and application version number) may be sent to Google when you install or uninstall that service or when that service periodically contacts our servers, such as for automatic updates.

#### ◦ Local storage

We may collect and store information (including personal information) locally on your device using mechanisms such as browser web storage (including HTML 5) and application data caches.

#### ◦ Cookies and anonymous identifiers

We use various technologies to collect and store information when you visit a Google service, and this may include sending one or more cookies or anonymous identifiers to your device. We also use cookies and anonymous identifiers when you interact with services we offer to our partners, such as advertising services or Google features that may appear on other sites.

### How we use information we collect

We use the information we collect from all of our services to provide, maintain, protect and improve them, to develop new ones, and to protect Google and our users. We also use this information to offer you tailored content – like giving you more relevant search results and ads.

We may use the name you provide for your Google Profile across all of the services we offer that require a Google Account. In addition, we may replace past names associated with your Google Account so that you are represented consistently across all our services. If other users already have your email, or other information that identifies you, we may show them your publicly visible Google Profile information, such as your name and photo.

When you contact Google, we may keep a record of your communication to help solve any issues you might be facing. We may use your email address to inform you about our services, such as letting you know about upcoming changes or improvements.

We use information collected from cookies and other technologies, like pixel tags, to improve your user experience and the overall quality of our services. For example, by saving your language preferences, we'll be able to have our services appear in the language you prefer. When showing you tailored ads, we will not associate a cookie or anonymous identifier with sensitive categories, such as those based on race, religion, sexual orientation or health.

We may combine personal information from one service with information, including personal information, from other Google

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Privacy Policy – Privacy &amp; Terms – Google

services – for example to make it easier to share things with people you know. We will not combine DoubleClick cookie information with personally identifiable information unless we have your opt-in consent.

We will ask for your consent before using information for a purpose other than those that are set out in this Privacy Policy.

Google processes personal information on our servers in many countries around the world. We may process your personal information on a server located outside the country where you live.

## Transparency and choice

People have different privacy concerns. Our goal is to be clear about what information we collect, so that you can make meaningful choices about how it is used. For example, you can:

- [Review and control](#) certain types of information tied to your Google Account by using Google Dashboard.
- [View and edit](#) your ads preferences, such as which categories might interest you, using the Ads Preferences Manager. You can also opt out of certain Google advertising services [here](#).
- [Use our editor](#) to see and adjust how your Google Profile appears to particular individuals.
- [Control](#) who you share information with.
- [Take information](#) out of many of our services.

You may also set your browser to block all cookies, including cookies associated with our services, or to indicate when a cookie is being set by us. However, it's important to remember that many of our services may not function properly if your cookies are disabled. For example, we may not remember your language preferences.

## Information you share

Many of our services let you share information with others. Remember that when you share information publicly, it may be indexable by search engines, including Google. Our services provide you with different options on sharing and removing your content.

## Accessing and updating your personal information

Whenever you use our services, we aim to provide you with access to your personal information. If that information is wrong, we strive to give you ways to update it quickly or to delete it – unless we have to keep that information for legitimate business or legal purposes. When updating your personal information, we may ask you to verify your identity before we can act on your request.

We may reject requests that are unreasonably repetitive, require disproportionate technical effort (for example, developing a new system or fundamentally changing an existing practice), risk the privacy of others, or would be extremely impractical (for instance, requests concerning information residing on backup tapes).

Where we can provide information access and correction, we will do so for free, except where it would require a disproportionate effort. We aim to maintain our services in a manner that protects information from accidental or malicious destruction. Because of this, after you delete information from our services, we may not immediately delete residual copies from our active servers and may not remove information from our backup systems.

## Information we share

We do not share personal information with companies, organizations and individuals outside of Google unless one of the following circumstances apply:

- **With your consent**

We will share personal information with companies, organizations or individuals outside of Google when we have your consent to do so. We require opt-in consent for the sharing of any [sensitive personal information](#).

- **With domain administrators**

If your Google Account is managed for you by a domain administrator (for example, for Google Apps users) then your domain administrator and resellers who provide user support to your organization will have access to your Google Account information (including your email and other data). Your domain administrator may be able to:

- view statistics regarding your account, like statistics regarding applications you install.
- change your account password.
- suspend or terminate your account access.
- access or retain information stored as part of your account.
- receive your account information in order to satisfy applicable law, regulation, legal process or enforceable governmental request.
- restrict your ability to delete or edit information or privacy settings.

Please refer to your domain administrator's privacy policy for more information.

- **For external processing**

We provide personal information to our affiliates or other trusted businesses or persons to process it for us, based on our instructions and in compliance with our Privacy Policy and any other appropriate confidentiality and security measures.

- **For legal reasons**

We will share personal information with companies, organizations or individuals outside of Google if we have a good-faith belief that access, use, preservation or disclosure of the information is reasonably necessary to:

- meet any applicable law, regulation, legal process or enforceable governmental request.
- enforce applicable Terms of Service, including investigation of potential violations.
- detect, prevent, or otherwise address fraud, security or technical issues.
- protect against harm to the rights, property or safety of Google, our users or the public as required or permitted by law.

We may share aggregated, non-personally identifiable information publicly and with our partners – like publishers, advertisers or connected sites. For example, we may share information publicly to show trends about the general use of our services.

If Google is involved in a merger, acquisition or asset sale, we will continue to ensure the confidentiality of any personal information and give affected users notice before personal information is transferred or becomes subject to a different privacy policy.

## **Information security**

We work hard to protect Google and our users from unauthorized access to or unauthorized alteration, disclosure or destruction of information we hold. In particular:

- We encrypt many of our services using SSL.
- We offer you two step verification when you access your Google Account, and a Safe Browsing feature in Google Chrome.
- We review our information collection, storage and processing practices, including physical security measures, to guard against unauthorized access to systems.
- We restrict access to personal information to Google employees, contractors and agents who need to know that information in order to process it for us, and who are subject to strict contractual confidentiality obligations and may be disciplined or terminated if they fail to meet these obligations.

8/20/2014

Privacy Policy – Privacy &amp; Terms – Google

## Application

Our Privacy Policy applies to all of the services offered by Google Inc. and its affiliates, including services offered on other sites (such as our advertising services), but excludes services that have separate privacy policies that do not incorporate this Privacy Policy.

Our Privacy Policy does not apply to services offered by other companies or individuals, including products or sites that may be displayed to you in search results, sites that may include Google services, or other sites linked from our services. Our Privacy Policy does not cover the information practices of other companies and organizations who advertise our services, and who may use cookies, pixel tags and other technologies to serve and offer relevant ads.

## Enforcement

We regularly review our compliance with our Privacy Policy. We also adhere to several self regulatory frameworks. When we receive formal written complaints, we will contact the person who made the complaint to follow up. We work with the appropriate regulatory authorities, including local data protection authorities, to resolve any complaints regarding the transfer of personal data that we cannot resolve with our users directly.

## Changes

Our Privacy Policy may change from time to time. We will not reduce your rights under this Privacy Policy without your explicit consent. We will post any privacy policy changes on this page and, if the changes are significant, we will provide a more prominent notice (including, for certain services, email notification of privacy policy changes). We will also keep prior versions of this Privacy Policy in an archive for your review.

## Specific product practices

The following notices explain specific privacy practices with respect to certain Google products and services that you may use:

- [Chrome and Chrome OS](#)
- [Books](#)
- [Wallet](#)
- [Fiber](#)

# EXHIBIT D

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WHAT THEY KNOW

## Google Agonizes on Privacy as Ad World Vaults Ahead

By Jessica E. Vascellaro

Updated Aug. 10, 2010 12:01 a.m. ET

(Please see Corrections &amp; Amplifications item below)

A confidential, seven-page Google Inc. "vision statement" shows the information-age giant in a deep round of soul-searching over a basic question: How far should it go in profiting from its crown jewels—the vast trove of data it possesses about people's activities?

Should it tap more of what it knows about Gmail users? Should it build a vast "trading platform" for buying and selling Web data? Should it let people pay to not see any ads at all?

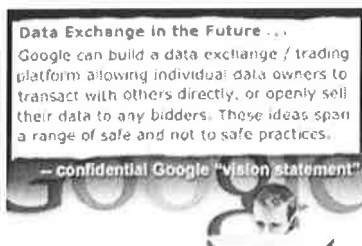
—ADVERTISEMENT—



These and other ideas big and small—the third one was listed under "wacky"—are discussed in the document, which was reviewed by The Wall Street Journal and compiled in late 2008 by Aitan Weinberg, now a senior product manager for interest-based advertising. Along with interviews with more than a dozen current and former employees, the vision statement offers a candid, introspective look at Google's fight to remain at the vanguard of the information economy.

### GOOGLE: INTO THE FUTURE

Read excerpts from Google's internal planning document.



Google is pushing into uncharted privacy territory for the company. Until recently, it refrained from aggressively cashing in on its own data about Internet users, fearing a backlash. But the rapid emergence of scrappy rivals who track people's online activities and sell that data, along with Facebook Inc.'s growth, is forcing a shift.

A person familiar with the matter called the vision statement a "brainstorming document" and said it wasn't presented to senior executives. Some of its ideas are "complete non-starters," this person said. Efforts to reach Mr. Weinberg weren't successful.



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Still, several have been implemented. Among them: Last year, Google for the first time started collecting a new type of data about the websites people visit, and using it to track and show them ads across the Internet.

Worries about the size of Google's data cache are "hypothetical," said co-founder Larry Page last month in response to a reporter's question about privacy. "It is always easy to be fearful of what could happen, right?"

#### GOOGLE'S WIDENING REACH

Google, a company with vast pools of data about its users, is moving into the world of highly targeted ads.



As Google changes, it is likely to bring the rest of the online world with it. With more users than any other Internet company, it has an unparalleled ability to make new ad-targeting methods mainstream. The company also actively participates in trade groups that regularly craft new privacy practices among themselves in hopes of thwarting legislation. The Federal Trade Commission said last year that the field can regulate itself as long as companies disclose their practices to users, among other things.

Google is overwhelmingly important to online privacy. Roughly 75% of global Internet users, or 943.8 million people, used

its services in June, more than any other Web company, according to comScore.

The vision statement describes the company's immense search database as "the BEST source of user interests found on the Internet," during a discussion of ways to make ads more relevant to users. "No other player could compete," it says. Later, the document warns that some ideas range from "safe" to "not" safe.

The most aggressive ideas would put Google at the cutting edge of the business of tracking people online to profit from their actions. A data-trading marketplace, for instance, would allow personal information from many sources—including Google—to be combined and used for highly personalized tracking of individuals.

Tiny companies like BlueKai Inc. and eXelate Media Ltd. already offer some of these services, pressuring Google to match them. A Wall Street Journal investigation, "What They Know," is examining the widening trade in this kind of data and the consequences for individual privacy.



Google co-founder Larry Page ASSOCIATED PRESS

Google trails in some of these techniques by choice. Famous for its unofficial corporate motto, "Don't Be Evil," for years it resisted using any method to track people online without their knowledge at the fierce insistence of founders Sergey Brin and Mr. Page. But the two men have gradually decided they can begin exploiting the data their company controls, without exploiting consumers, according to interviews with more than a dozen current and former employees.

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The founders believe they are improving the Internet user's experience, said Alma Whitten, who leads Google's privacy engineering, in a June interview. "What's good for the consumer is good for the advertiser."

A recent Journal examination of the proliferation of online tracking found that Google's tracking code appeared on 45 of the 50 most popular U.S. websites. (For details on those findings, go to [WSJ.com/WTk](http://WSJ.com/WTk).)

The 2008 vision statement along with a dozen other internal documents reviewed by the Journal tell the inside story of how Google dragged its feet while its founders' views evolved.

Selling ads is Google's big money-maker, but the online-ad business is broadening away from Google's sweet spot, selling ads tied to the search-engine terms people use. Instead, advertisers want to target people based on more specific personal information such as hobbies, income, illnesses or circles of friends.

The changes at Google reflect a power realignment online. For years, the strongest companies on the Internet were the ones with the most visitor traffic. Today, the power resides with those that have the richest data and are the savviest about using it.

That has propelled Internet ad companies into an arms race so swift that even Google fears being left behind. One slide from an internal presentation in mid-2008, which was reviewed by the Journal, is headlined bluntly: "Get in the Game."

That particular slide describes the importance of breaking into the lucrative business of selling "display" ads, which are larger ads with pictures, as opposed to smaller text ads. Today, Google still trails market leader Yahoo in U.S. display-ad revenue, according to analysts.

Google still leads the Internet pack overall, of course. Its revenue, \$23.7 billion in 2009, is more than three times Yahoo's, its closest competitor. Its online advertising business is growing faster than those of its publicly held U.S. rivals.

But Google's revenue growth has slowed dramatically. And social-networking powerhouse Facebook is a widening threat with its ability to sell highly targeted ads to its more than 500 million users.

Facebook fears run deep at Google, which is designing its own social-networking service. In a sign of how quickly things change, the 2008 vision statement scarcely mentioned social networks.

Google also plans to go head-to-head with Facebook's "Like" button—a tiny tool on many websites that lets people tell friends they "like" something. Each click gives Facebook valuable, personal data about people's interests.

Few online companies have the potential to know as much about its users as Google. Consider 26-year-old Ari Brand, an actor living in Manhattan's East Village. Google has

access to the fact he paid \$733 for a flat-screen TV, because he uploaded his budget to Google Docs, an online word processor and spreadsheet. It has access to the 23,000 emails he has sent through Gmail. Google also saves searches tied to the network address of Mr. Brand's computer, which it makes anonymous after 18 months.

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- On Web's Frontier, Anonymity in Name Only
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- Explore the Data
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#### THE GREAT PRIVACY DEBATE

- Why Tracking Isn't Bad
- The Dangers of Web Tracking

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Significantly, however, Google doesn't mix those separate pots of personal data. For instance, it doesn't use data gleaned from a person's Gmail account to target ads to that person elsewhere online. Google's computers do, however, scan Gmail messages to place contextual ads next to the emails themselves.

Google also says much of its data can't be tied to a person by name.

Executives long considered the privacy risks too great relative to the business rewards. According to people familiar with Google's thinking, they felt the company was being held to a higher standard than less well-known firms, and preferred to let more aggressive rivals test the boundaries.

Concerns about antitrust scrutiny also heightened the risk of finding new ways to profit from Google's exclusive data.

As recently as 2006 or so, Google's sights weren't set on Facebook—they were set on AOL and Yahoo, which together controlled roughly 40% of the U.S. display-ad business, analysts say.

One big obstacle in winning more of that business was Google co-founder Mr. Page, who objected to letting Google's advertising customers work with companies that installed "cookies" on people's computers for purposes of serving ads and tracking their performance. Cookies are little text files that can, among other things, be used to help track people's activities online to show them ads targeted to their interests.

Those policies hurt Google's display ad sales because the company wouldn't let advertisers use technology they were used to. Google didn't use ad-targeting cookies itself, either. That meant Google could only sell ads based only on the name or content of a page—for instance, putting a shoe ad on a page about shoes. That is known as "contextual" targeting, and many advertisers consider it less effective than "behavioral" targeting, which identifies specific users and their interests.

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#### HOW TO PROTECT YOURSELF

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Almost every major website you visit is tracking your online activity. Here's a step-by-step guide to fending off trackers.



In 2006, Gokul Rajaram, then a senior Google staffer, and ad-sales executive Tim Armstrong tried to change Mr. Page's mind about letting other companies place cookies.

In an interview, Mr. Rajaram recalls that he thought it would be an easy sell. A growing number of advertisers were refusing to buy display ads from Google. Market research showed AOL and Yahoo were trouncing Google in the display market.

Messrs. Page and Brin weren't swayed. "I was kind of shocked," Mr. Rajaram says. "They just didn't look at it the same way."

As factions inside Google fought over the issue, an opportunity arose. DoubleClick Inc., a giant in the business of placing display ads on websites, put itself up for sale—and Google archrival Microsoft Corp. [MSFT +0.14%](#) was circling.

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Google executives were leery of the way DoubleClick used cookies to track people online, on the principle that many users had no idea they were being tracked, people familiar with the situation say.

But an acquisition of DoubleClick would instantly bring in display-advertising expertise and clients, they thought.

In 2007, Google agreed to buy DoubleClick for \$3.1 billion. At the time, some employees joked Google had to spend billions just to get Mr. Page to like cookies, people familiar with the matter say.

Google and DoubleClick executives huddled to decide how to blend the two companies' products. They had a lot of ground to make up.

According to a resulting presentation slide, dated July 2008—the one headlined "Get in the Game"—Google offered fewer ways to measure an ad's effectiveness than Atlas, a rival owned by Microsoft. And Google had none of the behavioral-targeting capacities of AOL's Tacoda unit—meaning it couldn't target ads to people based on websites they visited.

Google executives finally agreed it was cookie time. As a result, every page where Google sold a display ad began installing a DoubleClick cookie on users' computers.

For the first time, Google had the ability to deliver ads targeted to individual people's computers. But just because it had the ability, Google didn't start using it. There was still too much internal resistance.

Mr. Weinberg, the author of the 2008 "vision statement," came to Google from DoubleClick. He and a small group of product managers and marketing officials began discussing the ways Google could target ads to people more aggressively.

His memo, stamped "INTERNAL CONFIDENTIAL," acknowledged the delicateness of the subject. Audience targeting is "of a sensitive nature," it stated in the very first sentence, due to the possibility of "mis-understanding" among users.

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The memo then went on to outline a sweeping vision in which Google could get other websites from around the Internet to share their data with it for the purpose of targeting ads.

The document also says Google could start selling ads across the Web based on the things it knew about people from their Gmail

accounts, and also from their use of Google's Checkout service, a PayPal rival.

All of that would be a significant change. Currently, although Google places contextual ads within a user's Gmail account, it doesn't follow that person to other websites with those ads.

The document shows awareness of the privacy implications. Nothing would happen "without strong consideration of privacy, legal and industry best practices in mind," it states. A goal should be to limit users' feeling of "creepiness" from seeing finely targeted ads, it says.

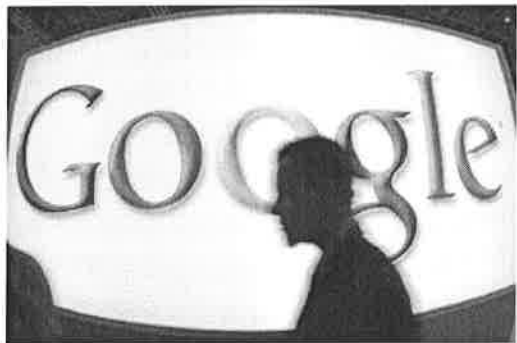
By late 2008, Google executives were preparing to launch ads targeted at users' interests. But the specifics still remained controversial.

Tensions erupted during a meeting with about a dozen executives at Google's Mountain View, Calif., headquarters about 18 months ago when Messrs. Page and Brin shouted at each other over how aggressively Google should move into targeting, according to a person who had knowledge of the meeting. "It was awkward," this person said. "It was like watching your parents fight."

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Mr. Brin was more reluctant than Mr. Page, this person said. Eventually, he acquiesced and plans for Google to sell ads targeted to people's interests went ahead.



Google had the ability to deliver ads targeted to individual people's computers, But just because it had the ability, Google didn't start using it. ASSOCIATED PRESS

Google launched the new advertising product, "interest-based ads" in March 2009. The service, currently available only to a limited group of advertisers, uses cookies to track any time a user visits one of the more than one million sites where Google sells display ads.

To offset the founders' concerns about cookies' secretiveness, Google set up a page, [www.google.com/ads/preferences](http://www.google.com/ads/preferences), where people can opt out and see what Google has inferred about their interests.

Google adopted other vision-statement ideas. Last September, it launched its new ad exchange, which lets advertisers target individual people—consumers in the market for shoes, for instance—and buy access to them in real time as they surf the Web. Google takes a cut of each ad sale.

In short, Google is trying to establish itself as the clearinghouse for as many ad transactions as possible, even when those deals don't actually involve consumer data that Google provides or sees.

The further step in that progression would be for Google to become a clearinghouse for everyone's data, too. That idea, also laid out in the vision statement, is still being considered, people familiar with the talks say. That would put Google—already one of the biggest repositories of consumer data anywhere—at the center of the trade in other people's data as well.

- **Excerpts:** Google's Confidential 'Vision Statement'
- **Graphic:** Google's Widening Reach
- Follow @whattheyknow on Twitter
- Web's New Gold Mine: Your Secrets
- On Web's Frontier, Anonymity in Name Only
- Follow @whattheyknow on Twitter
- **Full Coverage:** [WSJ.com/WTk](http://WSJ.com/WTk)

### Corrections & Amplifications

Google Inc. is "moving very fast" to explore new uses for its database of users' online searches, Google founder Larry Page said to reporters last month. An earlier version of this article failed to make clear that Mr. Page was referring specifically to using search logs for such purposes as identifying public-health trends, rather than using its broad data for advertising.

**Write to** Jessica E. Vascellaro at [jessica.vascellaro@wsj.com](mailto:jessica.vascellaro@wsj.com)

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WHAT THEY KNOW

## Web's Hot New Commodity: Privacy

By Julia Angwin and Emily Steel

Updated Feb. 28, 2011 12:01 a.m. ET

As the surreptitious tracking of Internet users becomes more aggressive and widespread, tiny start-ups and technology giants alike are pushing a new product: privacy.

Companies including Microsoft Corp., McAfee Inc.—and even some online-tracking companies themselves—are rolling out new ways to protect users from having their movements monitored online. Some are going further and starting to pay people a commission every time their personal details are used by marketing companies.



Giles Sequeira now sells personal details about himself to advertisers. GARETH PHILLIPS FOR THE WALL STREET JOURNAL

"Data is a new form of currency," says Shane Green, chief executive of a Washington start-up, **Personal Inc.**, which has raised \$7.6 million for a business that aims to help people profit from providing their personal information to advertisers.

The Wall Street Journal's year-long What They Know investigation into online tracking has exposed a fast-growing network of hundreds of companies that collect highly personal details about Internet users—their online activities, political views, health worries, shopping habits, financial situations and even, in some cases, their real names—to feed the \$26 billion U.S. online-advertising industry.

In the first nine months of last year, spending on Internet advertising rose nearly 14%, while the overall ad industry only grew about 6%, according to data from PriceWaterhouseCoopers LLP and WPP PLC's Kantar Media.

Testing the new privacy marketplace are people like Giles Sequeira, a London real-estate developer who recently began selling his own personal data. "I'm not paranoid about privacy," he says. But as he learned more, he says, he became concerned about how his data was getting used.

People "have no idea where it is going to end up," he says.

So in December, Mr. Sequeira became one of the first customers of London start-up **Allow Ltd.**, which offers to sell people's personal information on their behalf, and give them 70% of the sale. Mr. Sequeira has already received one payment of £5.56 (\$8.95) for letting Allow tell a credit-card company he is shopping for new plastic.

"I wouldn't give my car to a stranger" for free, Mr. Sequeira says, "So why do I do that

8/8/2017

The Market for Online Privacy Heats Up - WSJ

## GRAPHIC

Companies are introducing free and paid products that help people manage the way companies track their online activities. Some services pay people when their personal details are used.

### The Nascent Privacy Marketplace

Companies are introducing free and paid products that help people manage the way companies track their online activities. Some services pay people when their personal details are used. Selected



with my personal data?"

As people are becoming more aware of the value of their data, some are seeking to protect it, and sometimes sell it. In January at the World Economic Forum in Davos, Switzerland, executives and academics gathered to discuss how to turn personal data into an "asset class" by giving people the right to manage and sell it on their own behalf.

"We are trying to shift the focus from purely privacy to what we call property rights," says Michele Luzi, a director at consulting firm Bain & Co. who led the Davos discussion.

Allow, the company that paid Mr. Sequeira, is just one of nearly a dozen start-ups hoping to profit from the nascent privacy market. Several promise to pay people a commission on the sale of their data. Others offer free products to block online tracking, in the hopes of later selling users other services—such as disposable phone numbers or email addresses that make personal tracking tougher. Still others sell paid services, such as removing people's names from marketing databases.

#### RELATED ARTICLES

- **Digits:** Journal Series Inspires One Start-Up
- **Digits:** Former RapLeaf Intern Launches Privacy Start-up

"Entrepreneurs smell opportunity," says Satya Patel, venture capitalist at Battery Ventures, which led a group of investors that poured \$8 million in June into a start-up called **SafetyWeb**, which helps parents monitor their children's activities on social-networking sites and is rolling out a new

privacy-protection service for adults, **myID.com**.

For the lightly regulated tracking industry, a big test of the new privacy marketplace is whether it will quiet the growing chorus of critics calling for tougher government oversight. Lawmakers this month introduced two separate privacy bills in Congress, and in December the Obama administration called for an online-privacy "bill of rights." The Federal Trade Commission is pushing for a do-not-track system inspired by the do-not-call registry that blocks phone calls from telemarketers.

The industry is hustling on several fronts to respond to regulatory concerns. Last week, Microsoft endorsed a do-not-track system. Microsoft also plans to add a powerful anti-tracking tool to the next version of its Web-browsing software, Internet Explorer 9. That's a reversal: Microsoft's earlier decision to remove a similar privacy feature from Explorer was the subject of a Journal article last year.

The online-ad industry itself is also rolling out new privacy services in hopes of heading off regulation. Most let users opt out of seeing targeted ads, though they generally don't prevent tracking.

The privacy market has been tested before, during the dot-com boom around 2000, a time when online tracking was just being born. A flurry of online-privacy-related start-

8/8/2017

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## WHAT THEY KNOW

- Your Apps Are Watching You
- Race Is On to 'Fingerprint' Devices
- Profiling Technology Mounts a Comeback
- Insurers Test Data Profiles to Identify Risky Clients
- A Web Pioneer Profiles Users by Name
- Facebook in Privacy Breach
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- Kids Face Intensive Tracking on Web
- Google Agonizes Over Privacy
- Stalking by Cellphone
- On Web's Cutting Edge, Anonymity in Name Only
- Microsoft Quashed Bid to Boost Web Privacy
- Personal Details Exposed Via Biggest U.S. Websites
- The Web's New Gold Mine: Your Secrets
- **Video Archive**
- **Complete Coverage:** What They Know

ups sprang up but only a few survived due to limited consumer appetite.

As recently as 2008, privacy was so hard to sell that entrepreneur Rob Shavell says he avoided even using the word when he pitched investors on his start-up, **Abine Inc.**, which blocks online tracking. Today, he says, Abine uses the word "privacy" again, and has received more than 30 unsolicited approaches from investors in the past six months.

In June, another company, TRUSTe, raised \$12 million from venture capitalists to expand its privacy services. At the same time, Reputation.com Inc. raised \$15 million and tripled its investments in new privacy initiatives including a service that removes people's names from online databases and a tool to let people encrypt their Facebook posts.

"It's just night and day out there," says

Abine's Mr. Shavell.

Online advertising companies—many of which use online tracking to target ads—are also jumping into the privacy-protection business. AOL, one of largest online trackers, recently ramped up promotion of privacy services that it sells.

And in December, enCircle Media, an ad agency that works with tracking companies, invested in the creation of a privacy start-up, **IntelliProtect**. Last month IntelliProtect launched a \$8.95-a-month privacy service that will, among other things, prevent people from seeing some online ads based on tracking data.

In its marketing material, IntelliProtect doesn't disclose its affiliation with the ad company, enCircle Media, that invested in it. When contacted by the Journal, IntelliProtect said it would never give or sell customer data to other entities, including its parent companies.

A cofounder of Allow, Justin Basini, also traces his roots to the ad industry. Mr. Basini came up with the idea for his new business when working as head of brand marketing for Capital One Europe. He says he was amazed at the "huge amounts" of data the credit-card companies had amassed about individuals.

But the data didn't produce great results, he says. The response rate to Capital One's targeted mailings was 1-in-100, he says—vastly better than untargeted mailings, but still "massively inefficient." Mr. Basini says. "So I thought, 'Why not try to incentivize the customer to become part of the process?'"

People feel targeted ads online are "spooky," he says, because people aren't aware of how much personal data is being traded. His proposed solution: Ask people permission before showing them ads targeted at their personal interests, and base the ads only on information people agree to provide.

In 2009, Mr. Basini left Capital One and teamed up with cofounder Howard Huntley, a technologist. He raised £440,000 (\$708,400) from family, friends and a few investors, and launched Allow in December. The company has attracted 4,000 customers, he says.

Mr. Basini says his strategy is to first make individuals' data scarce, so it can become more valuable when he sells it later. To do that, Allow removes its customers from the top 12 marketing databases in the U.K., which Mr. Basini says account for 90% of the market. Allow also lists its customers in the official U.K. registries for people who don't want to receive telemarketing or postal solicitations.

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Currently, Allow operates only in the U.K., which (unlike the U.S.) has a law that requires companies to honor individuals' requests to be removed from marketing databases.

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Then, Mr. Basini asks his customers to create a profile that can contain their name, address, employment, number of kids, hobbies and shopping intent—in other words, lists of things they're thinking about buying. Customers can choose to grant certain marketers permission to send them offers, in return for a 70% cut of the price marketers pay to reach them. Allow says it has finalized a

deal with one marketer and has five more deals it hopes to close soon.

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You should not be able to sell your privacy. It's a dumb idea and someone is going to end up suing. Internet privacy shouldn't be a question and you shouldn't have to give up any information you didn't want to.

—Josh Harmon

Mr. Basini says Allow tries to prevent people from "gaming" the system by watching for people who state an intention to buy lots of things, but don't follow through.

Because Allow's data comes from people who have explicitly stated their interest in being contacted about specific products, it can command a higher price than data gathered by stealthier online-tracking technologies.

For instance, online-tracking companies

routinely sell pieces of information about people's Web-browsing habits for less than a penny per person. By comparison, Allow says it sells access to Mr. Sequeira for £5 to £10 per marketer.

Mr. Sequeira, the London real-estate executive, says that after he filled out an "intention" to get a new credit card, he received a £15.56 credit in his Allow account: a £10 signing fee plus a £5.56 payment from the sale of his data to a credit-card marketer. So far, he says, he hasn't received a card offer from the company.

"I don't think it's going to make a life-changing amount of money," says Mr. Sequeira. But, he says he enjoyed the little windfall enough that he is now letting Allow offer his data to other advertisers. "I can see this becoming somewhat addictive."

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